



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 28 2013

Mr. Peter T. Millard
City of Fairfax
10455 Armstrong Street
Fairfax, VA 22030

Re: Docket No. CWA-03-2013-0079DN
Administrative Order for Compliance and Request for Information

Dear Mr. Millard:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the City of Fairfax submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the City: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the City of Fairfax has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.



If you require any information or assistance regarding this matter, please contact Peter Gold,
NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR
Jerome Brooks, VA DEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

City of Fairfax
10455 Armstrong Street
Fairfax, VA 22030

Docket No. CWA-03-2013-0079DN

**ORDER FOR COMPLIANCE
AND
INFORMATION REQUEST**

Respondent

I. STATUTORY AUTHORITY

- 1) This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- 2) Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control

Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.

- 6) On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- 11) "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:
 - a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm

drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and

b) "Designed or used for collecting or conveying storm water. . ." 40 C.F.R. § 122.26(b)(8)(i).

13) A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:

a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And

b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).

14) Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:

a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or

b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. *See also* 4 VAC 50-60-400.

15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."

16) Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . ."

17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- 20) City of Fairfax, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Fairfax, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Potomac River/Difficult Run, Accotink Creek, Pohick Creek, Lower Bull Run/Popes Head Creek and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Potomac River/Difficult Run, Accotink Creek, Pohick Creek, Lower Bull Run/Popes Head Creek and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- 24) The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- 26) During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. VIOLATIONS

Count 1: MCM 3: Illicit Discharge Detection and Elimination

- 27) Section II.B.3.d of the Permit requires the Respondent to "develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4."
- 28) Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified

best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures” in each of its annual reports.

- 29) Respondents MS4 Program Plan requires that: “The city will continue to work to develop a program that includes the following components: Procedures for locating priority areas most likely to have illicit discharges; Methods to detect and trace the source of illicit discharges; Means to remove the source of any illicit discharges; Continuation of the storm drain marker program; Continued development of the city's program to provide a mechanism for citizens to report illicit discharges. City residents can contact the City of Fairfax Fire Marshall at 703 385 7830 or the Police Department at 703 385 7924 to report illicit discharges and improper dumping.; Provide outreach materials to businesses and citizens on the hazards associated with illegal dumping and improper disposal of waste.; Regulation and prohibition of discharges not covered under the VPDES permit.; Enforcement procedures - the Zoning Administrator enforces Chapter 110-211 of the City Code in conjunction with the Fire Marshal and the Public Works Department.; Procedures for program evaluation and assessment.”
- 30) Based on EPA’s 2011 File Review Respondent either:
- a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations

- 31) Section II.B.6 of the Permit requires the Respondent to “develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.”
- 32) Section II.E.3.b. of the Permit requires the Respondent to include “the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures” in each of its annual reports.
- 33) Respondents MS4 Program Plan requires that: “The City of Fairfax will continue to develop and implement an operation and maintenance program with the ultimate goal of preventing or reducing pollutant runoff from municipal operations into the storm sewer system. The city currently has set guidelines on employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet building maintenance, new construction and land disturbances and storm water system maintenance.”
- 34) Based on EPA’s 2011 File Review Respondent either:

- a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
- b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. CONCLUSIONS OF LAW

- 35) Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this 28th day of March, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

- 36) Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 37) Within thirty (30) days of the effective date of this Order, Respondent shall:
- a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or
 - b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold
U.S. EPA, Region III (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE
DCR Division of Stormwater Management
Office of Regulatory Programs Manager
Virginia Department of Conservation and Recreation
203 Governor Street, Suite 206
Richmond, VA 23219

- c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

VII. GENERAL PROVISIONS

- 38) Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- 39) This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- 40) Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

VIII. JUDICIAL REVIEW

- 41) Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.

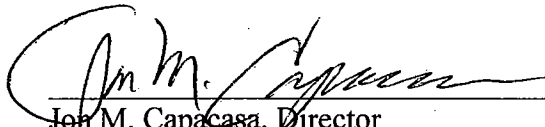
IX. OPPORTUNITY TO CONFER

- 42) Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. EFFECTIVE DATE

- 43) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 28 2013


Jon M. Capacasa, Director
Water Protection Division
U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 26 2012

Mr. Craig Carinci, Director
Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 449
Fairfax, VA 22035

Re: Administrative Order - Docket No. CWA-03-2013-0024DN

Dear Mr. Carinci:

Enclosed is an Administrative Order (Order) issued this date pursuant to Section 309(a) of the Act, as amended, 33 U.S.C. § 1319(a). This Order supersedes Administrative Order CWA-03-2012-0077DN and was necessary to correct the date of the inspection provided in paragraph 2. The Order contains findings that Fairfax County has violated Section 301 of the Act, 33 U.S.C §§ 1311. You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order may result in additional enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

Fairfax County has the right to request a hearing regarding the violations alleged in the Order. Such request should be included with the Answer to this Order and must also be made within thirty (30) days of receipt of this letter and Order.

Whether or not a hearing is requested, we invite Fairfax County to confer informally with EPA concerning the alleged violations. Fairfax County may represent itself, or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the EPA Office of Regional Counsel will normally be present at any informal conference. The attorney assigned to this matter is:

Judy Hykel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
215-814-2646



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Customer Service Hotline: 1-800-438-2474*

A request for an informal conference does not extend the thirty (30) day period by which Fairfax County must request, or waive a hearing.

If Fairfax County is a "small business" under the Small Business Regulatory Enforcement Fairness Act (SBREFA), you should review the enclosed information sheet, which provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also information on compliance assistance. Any decision to participate in such program or to seek compliance assistance does not relieve Fairfax County of its obligation to respond in a timely manner to this enforcement action, does not create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve its legal rights, Fairfax County must comply with all rules governing the administrative enforcement process. The Ombudsman and does not participate in the resolution of EPA's enforcement actions.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Anne Crosier, VADCR
Doug Fritz, VADCR



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2012 OCT 26 PM 6:08

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

IN THE MATTER OF:

Fairfax County, Virginia
Department of Public Works
& Environmental Services
12000 Government Center Parkway,
Suite 449
Fairfax, VA 22035,

Docket No. CWA-03-2013-0024DN

**FINDINGS OF VIOLATION &
ORDER FOR COMPLIANCE**

Respondent

I. STATUTORY AUTHORITY

1. This Order for Compliance ("Order") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. Section 1319(a). The Administrator has delegated these authorities to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source by a person into a water of the United States except in compliance with a permit issued under the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
3. The Fairfax County (hereinafter "Respondent") is a political subdivision of the state of Virginia and is therefore a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. Section 402 of the Act, 33 U.S.C. § 1342, establishes the NPDES program. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.

5. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the State of Virginia has an EPA-approved NPDES program administered by the Virginia Department of Conservation and Recreation ("VADCR").
6. "Discharge of a pollutant" includes additions of pollutants to the waters of the United States through "pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works" 40 C.F.R. § 122.2. At all times relevant to this complaint, Respondent, a municipality, owned and operated a Municipal Separate Storm Sewer System ("MS4") as that term is defined in 40 C.F.R. § 122.26, which is such a conveyance.
7. The term "municipal separate storm sewer system" (MS4) includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
8. Respondent's MS4 is located within the geographic boundaries of Fairfax County, Virginia.
9. Stormwater from Respondent's MS4 drains into 15 major streams: Accotink Creek, Bull Run, Cameron Run (Hunting Creek), Cub Run, Difficult Run, Dogue Creek, Four Mile Run, Horsepen Run, Little Hunting Creek, Little Rocky Run, Occoquan River, Pimmit Run, Pohick Creek, Popes Head Creek, Sugarland Run, and various other minor streams, which are "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
10. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(c) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
11. The NPDES Permit No VA0088587 was issued on January 24, 2002 ("2002 Permit").
12. On June 8-9, 2011, the EPA Region III and its duly-authorized representatives conducted an inspection (the "June 2011 Inspection") of Respondent's MS4 Program to evaluate compliance with the General Permit and the 2005 Storm Water Management plan ("SWMP"). The EPA findings of the June 2011 Inspection are documented in a June 2011 Inspection Report ("EPA Inspection Report")

III. EPA FINDINGS AND CONCLUSIONS OF LAW

Failure to fully develop and implement a program for Industrial and High Risk Stormwater Runoff

13. Part I.B.1.h of the Permit requires Respondent to develop and implement a program to identify and control pollutants from Industrial & High Risk Runoff discharges into its MS4.
14. EPA determined during the June 2011 Inspection (EPA Inspection Report Observation #4) that Respondent's inspectors were not identifying sources of pollutants or assessing management practices for controlling pollutants, from Industrial & High Risk Runoff discharges that may enter the MS4.
15. Respondent's failure to develop and implement a program to identify and control pollutants from Industrial & High Risk Runoff discharges into its MS4 are violations of Part I.B.1.h of the 2002 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Failure to Fully Implement the Stormwater Management Program for Construction Sites

16. Part I.B.1.i.2 of the 2002 Permit requires Respondent to implement a program to reduce the discharge of pollutants from certain construction sites that includes inspecting construction sites and enforcing control measure requirements.
17. The Fairfax Storm Water Management Plan, (page 36, Governing Policy, the 6th bullet item) identifies the VADCR Erosion and Sediment Control Handbook as establishing minimum design and implementation standards for E&S control measures in Fairfax County.
18. The VADCR Erosion and Sediment Control Handbook (Chapter 7. Administrative Guidelines, paragraph A.2 under Inspections) requires inspection reports to contain comments concerning compliance or non-compliance and notes of any verbal communications concerning the project.
19. EPA determined during its June 2011 Inspection (EPA Inspection Report – Observation #6) that at times during inspections, Fairfax County construction site inspectors have not documented their observations concerning compliance or non-compliance, and have not documented changes they make to the erosion and sediment control plans, as a required by the program established in the VADCR Erosion and Sediment Control Handbook.
20. Respondent's failure to implement its SWMP requirements established in the VADCR Erosion and Sediment Control Handbook is a violation of Part I.B.1.i.2 of the 2002 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. ORDER

AND NOW, this 26th day of October, 2012, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a) to do the following:

21. The Respondent shall:

- a. Immediately takes steps (e.g., revisions to SOPs, additional training, expanded resources) to ensure that inspectors identify sources of pollutants, and assess management practices for controlling pollutants from Industrial & High Risk Runoff discharges that may enter the MS4; and
- b. Immediately take steps (e.g., revisions to SOPs, additional training, expanded resources) to ensure inspectors fully and accurately document their observations concerning compliance or non-compliance and any changes they make to erosion and sediment control plans during construction site inspections;
- c. Provide documentation describing the steps that are initiated to attain compliance with paragraphs 22. a. and 22.b.
- d. For all submittals to this Order, provide certification, signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
- e. Provide the information required in paragraphs 22.c and d. within sixty (60) days of receipt of this Order to

Chuck Schadel (3WP42)
Enforcement Officer
US EPA Region 3
NPDES Enforcement Branch
1650 Arch St
Philadelphia, Pa 19103
215. 814. 5761


VI. GENERAL PROVISIONS

23. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, 18 U.S.C. § 1001, and/or a civil judicial, action initiated by the EPA and the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject, to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
24. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.
25. Respondent shall permit EPA or its authorized representative to inspect any site under its control or authority at reasonable times to confirm that Respondent is in compliance with this Order and with any applicable permit. EPA reserves all existing inspection authority.
26. Violation of the terms and conditions of this Order constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.
27. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt> and states the scope of such review.

VII. EFFECTIVE DATE

28. This ORDER AND REQUEST is effective thirty (30) days after receipt unless modified or withdrawn.

Date: OCT 26 2012


Jon M. Capacasa, Director
Water Protection Division
EPA, Region III

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below the original of this Administrative Order (and copy) was hand-delivered to the Regional Hearing Clerk, EPA, Region III, and that true and correct copies were sent to the following persons:

Mr. Craig Carinci, Director
Storm Water Planning Division
Fairfax County
12000 Government Center Parkway, Suite 449
Fairfax, VA 22035

OCT 26 2012
Dated: -----



Charles A. Schadel
NPDES Enforcement Branch



**FAIRFAX COUNTY
MUNICIPAL SEPARATE STORM
SEWER SYSTEM (MS4)
INSPECTION**

**STORMWATER PLANNING DIVISION
DEPARTMENT OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
12000 GOVERNMENT CENTER PARKWAY, SUITE 449
FAIRFAX, VA 22035**

June 8 through 9, 2011

**Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region III
Water Protection Division
Office of NPDES Enforcement (3WP42)
1650 Arch Street
Philadelphia, PA 19103**

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I. INTRODUCTION

From June 8 through 9, 2011, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of the County of Fairfax, Virginia. Discharges from the County's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088587, effective January 24, 2002 and an expiration date of 24 January 2007. The purpose of this inspection is to obtain information that EPA will use to evaluate compliance with the County's Permit VA0088587, which is included in Attachment 1.

Stormwater and Mr. Randy Bartlett, Director
Wastewater¹:

Stormwater Ms. Kate Bennett, MS4 Coordinator
Planning Mr. Craig Carinci, Director
Division: Ms. Takisha Cannon, Ecologist II
Mr. Fred Rose, Branch Chief

Land Mr. Assad Ayoubi, Director
Development Mr. Charles Craft, General Superintendent
Services: Mr. Bruce Nassimbeni
Mr. Skip Raynor, Supervising Engineering Inspector
Mr. Ken Williams, Chief, Plan and Document Control
Mr. Mike Ernst, Senior Engineering Inspector
Mr. Glenn Huffman, Supervising Engineering Inspector
Mr. Thomas French, Senior Engineering Inspector
Ms. Diana Guillen, Supervising Engineering Inspector

Maintenance Mr. Steve Aitcheson, Director
and Stormwater Mr. Bill Schell, Branch Chief
Management Mr. PJ Tierno, Engineer Tech III
Division: Ms. Karlee Copeland, Environmental Scientist
Mr. Keith Appler, GIS Analyst
Mr. Stuart Stein, Contractor (GKY)
Mr. Jason Gibson, Contractor (GKY)
Mr. Casey Kight, Contractor (GKY)

EPA Mr. Charles Schadel, EPA Region 3
Representatives: Ms. Kyle Zieba, EPA Region 3

Virginia DCR Mr. Kelly Vanover, Regional Manager
Representative: Ms. Marian Carrol, Stormwater Compliance Specialist
Mr. Mason Harper, MS4 Permit Writer
EPA Mr. John McCutcheon, Stormwater Compliance Manager
Contractors: Mr. Mark Briggs, ERG
Ms. Kavya Kasturi, ERG

¹ A copy of sign-sheets containing the names of all county participants in the inspection is included as Attachment 2.
Draft Enforcement Confidential – Do Not Cite Or Quote

EXECUTIVE SUMMARY

From June 8 through 9, 2011, a compliance inspection team comprised of staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of the County of Fairfax, Virginia. Discharges from the County's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088587, effective January 24, 2002. The purpose of this inspection was to evaluate compliance with the County's Permit VA0088587, which is included in Attachment 1.

Virginia Permit Number VA0088587 Requirement	Observations
I.B.1.a) – Structural and Source Control Measures	Observation 1 Public Storm Water Management (SWM) facilities and Best Management Practices (BMPs) ponds inspected at least once every two years and private SWM facilities and BMPs ponds inspected at least once during the permit cycle and in accordance with the Storm Water Management Plan for Fairfax County.
I.B.1.d) - Retrofitting	Observation 2 Permit Requirement is not prescriptive. However, Fairfax County has installed 34 retrofits in 2010. Estimated cost is at least \$11M. Fairfax County has conducted retrofits every year.

I.B.1.f) – Illicit Discharge and Improper Disposal	Observation 3 Representative outfalls of the entire MS4 have been screened at least once during the permit term.
I.B.1.h) – Industrial and High Risk Stormwater Runoff	Observation 4 Fairfax County did not have an industrial and commercial facility inspector. However, Fairfax County staff stated that pending legislation in Virginia will give authority to counties to conduct inspections at industrial and commercial facilities and expects to begin conducting inspections of industrial and commercial facilities once the legislation is effective. Although the Fire Marshall's office is performing fire inspections of industrial and commercial sites, the focus of these inspections is not related to stormwater.
	Observation 5 Fairfax County developed a program for implementing BMPs and inspecting County-owned facilities
I.B.1.i) – Construction Site Runoff	Observation 6 Fairfax County's E&S Program conducts inspections of priority sites at least once per week, after rain events and follows through on enforcement. Fairfax County's E&S Program is fully compliant with the State construction program. However, Fairfax County E&S inspectors are not consistently and completely following inspection procedures regarding documenting construction site inspections.

I.C.1. – Watershed Monitoring	Observation 7	Fairfax County is implementing the long-term monitoring plan that has been approved by DCR. The monitoring is being conducted at representative stations to characterize the quality of storm water in at least two watersheds during the term of this permit.
Part I.C.1 – Annual Reports	Observation 8	On a timely manner, Fairfax County has submitted Annual Reports for each year.
Stream Restorations	Observation 9	Although there are no “stream restoration” requirements in the Permit, Fairfax County has invested considerably. The overall budget is being raised to \$28 million for year 2011.

II. OBSERVATIONS

Part I.B.1.a.1) & 2) – Structural and Source Control Measures

Fairfax County shall inspect and maintain public Storm Water Management (SWM) facilities and Best Management Practice (BMP) ponds. The inspection and maintenance schedule in Permit No. VA0088587 will be determined by the Storm Water Management Plan for Fairfax County. At a minimum these facilities will be inspected and receive maintenance once during this permit.

Fairfax County shall inspect private Storm Water Management (SWM) facilities and Best Management Practice (BMP) ponds. The inspection schedule will be determined by the Storm Water Management Plan for Fairfax County. At a minimum these facilities will be inspected once during this permit cycle. Fairfax County shall require maintenance agreements for all privately maintained storm water management facilities and/or BMP ponds. Fairfax County shall assure proper function and maintenance of these facilities.

Observation 1 - Fairfax County has presented documentation (Exhibit 1 and Exhibit 2) that demonstrates that the public Storm Water Management (SWM) facilities and Best Management Practices (BMPs) ponds have been inspected at least once every two years and private SWM facilities and BMPs ponds have been inspected at least once during this permit cycle and in accordance with the Storm Water Management Plan for Fairfax County. Fairfax County requires maintenance agreements for all privately maintained storm water management facilities and/or BMP ponds. Fairfax County tracks maintenance efforts of public and private SWM facilities and BMP Ponds.

Part I.B.1.d) - Retrofitting

Receiving water quality impacts shall be assessed for all storm water management facilities. When the permittee determines water quality impact, they shall continue to evaluate and retrofit existing storm water management facilities and areas without stormwater controls.

Observation 2 The Permit requirement is not prescriptive. However, Fairfax County has installed 34 retrofits in 2010. Estimated cost is at least \$11 million. Fairfax County has conducted retrofits every year.

Part I.B.1.f) – Illicit Discharge and Improper Disposal

The Permit requires that a program to locate and eliminate illicit discharges and improper disposal into the MS4 shall be implemented. This program shall include dry weather screening activities (described in Part I.B.1.f.) to locate portions of the MS4 with suspected illicit discharges and improper disposal activities. Follow-up efforts to eliminate illicit discharges and improper disposal shall be prioritized on the basis of magnitude and nature of the suspected discharge; sensitivity of the receiving water; and/or other relevant factors.

Observation 3. Fairfax County has presented documentation that demonstrates a program to effectively locate and eliminate illicit discharges and improper disposal into the MS4. The documentation demonstrates that Fairfax County's program includes effective dry weather screening activities and appropriate documentation (Exhibit – 3). The program establishes priorities and schedules for screening representative outfalls of the entire MS4 at least once during the permit term.

Fairfax County did not have an industrial and commercial facility inspector, and was not utilizing resources within other municipal programs having legal authority for site entry to inspect industrial and commercial facilities with a high risk of contributing stormwater pollutants. Fairfax County stated there is current legislation in Virginia that will give authority to counties responsible for watershed management to conduct inspections at industrial facilities. This legislation is expected to become law by July 1, 2011 and Fairfax County will then begin conducting inspections of industrial and commercial facilities where high risk runoff may occur.

Part I.B.1.h – Industrial and High Risk Stormwater Runoff

A program shall be implemented to identify and control pollutants in storm water discharges to the MS4 (municipal landfills; other treatment, storage, or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal and recovery facilities; facilities that are subject to EPCRA Title III, Section 313) and any other industrial or commercial discharge the permittee determine are contributing a substantial pollutant loading to the MS4.

Observation 4 Although the Fire Marshal's office is performing fire inspections of industrial and commercial sites, including those submitting SARA Title III Tier II reports and/or having VPDES General Stormwater permits, the focus of the Fire Marshal's inspections is not related to stormwater. On June 8, 2011, the EPA inspection team shadowed a Fire Inspector from the Fairfax County Fire Marshal's office on an inspection of Davis Industries, (Exhibit – 4) an automobile recycling facility. The EPA inspection team accompanied the Fire Inspector to determine the level at which the Fire Inspector focused on stormwater-related issues. While at Davis Industries, the Fire Inspector stated she evaluates facilities regarding fire issues, but not does not look at the stormwater permit or the Stormwater Pollution Prevention Plan (SWPPP). According to the Inspector, she looks for issues such as electrical hazards, hazardous materials storage, flammable materials storage, and housekeeping issues that may hinder an engine company from fighting a fire at the facility. If spills or releases of hazardous materials (e.g., oil) are observed by the Fire Inspector, these issues are noted and the site is directed to mitigate the situation.

Part I.B.1.h – Industrial and High Risk Stormwater Runoff (continued)

During the inspection, the Fire Inspector did note a hazardous material spill (see Photograph 1 in Attachment 4) and directed the facility to clean up the release immediately. (Exhibit 4), the Fire Inspector's report for Davis Industries, shows the Fire Inspector's findings from the inspection.

The EPA inspection team observed open-top drums containing liquids; however, the Fire Inspector made no mention of the drums. Soils stained with iron oxide and likely other heavy metals were observed near the rail loading areas and appeared to be washing toward the rail lines and possibly into the swale opposite the rail tracks during storm events (see Photograph 2 in Attachment 4); however, these issues were not included in the Fire Inspector's report for Davis Industries.

Storm Water Management Program (SWMP), Appendix A – Stormwater Program Summary Tables, H. BMPS for Industrial and High Risk Stormwater Runoff

Fairfax County identified in its' SWMP that a master inventory of County-industrial facilities would be developed and maintained, and that appropriate storm water pollution prevention measures are in place.

- Observation 5 Fairfax County developed and implemented stormwater pollution prevention plans (SWPPPs) for each of the County-owned municipal garages and the transfer station. Weekly stormwater inspections are being conducted at the County-owned municipal garages and transfer stations and along with required stormwater sampling. Annual stormwater training is also provided to employees at the County-owned municipal garages and transfer station to ensure all employees are aware of the issues associated with out-door storage of materials and the need to quickly cleanup drips and spills of automotive fluids.

Part I.B.1.i – Construction Site Runoff

A program to reduce the discharge of pollutants from construction sites. Fairfax County's Erosion and Sedimentation Program (E&S Program) shall be fully approved by the Virginia Department of Conservation & Recreation (DCR).

- Observation 6 Fairfax County's E&S Program is fully compliant with the State construction program. Additionally, Fairfax County's program includes a site plan review process and construction site inspections (Exhibit - 5) to meet this requirement. However, Fairfax County construction site inspectors are not consistently and completely following inspection procedures with regard to completing construction site inspections documentation.

The EPA inspection team shadowed two construction site inspectors while they inspected two construction sites. While Fairfax County has a "Handbook for Site Inspectors" (hereafter, Inspector's Handbook) which directs the inspector to use its "Inspection Checklist for Erosion and Sediment Control Installation" (Exhibit - 6) to assist in inspections, the inspectors did not use this checklist in the field.

Part I.B.1.i – Construction Site Runoff (continued)

The Inspector's Handbook also includes the County's "Erosion & Sediment Control Inspection Report" form, referred to by the inspectors as the 20/30 form; however, based on discussion with County staff, the inspectors only complete this form when problems are noted on site. An example of a completed 20/30 form is provided as Exhibit - 7.

The inspectors stated they may take notes in a notebook during the inspection; however, if no issues are noted, no other documentation is completed on site. One inspector also stated that he may make changes to the erosion and sediment control plan on site, but does not always document the changes.

While all inspections are documented in the SI2K Site Inspection 2000 database, (Exhibit – 8), the inspectors' notes are not consistent in format or detail. For example, multiple inspectors have conducted construction site inspections at the Metro West Site - Public Infrastructure Section. In some cases, inspectors simply selected that an erosion and sediment control inspection has been conducted but did not provide any details in the notes field.

In other cases, an inspector simply listed "CE" or "SF" referring to construction entrance and silt fence, respectively, without specifying whether this meant that these controls were checked and adequate or whether there were issues. Another inspector listed the items that were checked and stated that the items were adequate. Another inspector provided detailed notes on what he or she did during the inspection and the status of the controls.

Part I.B.1.i.2 of the permit requires Fairfax County to "inspect construction sites and enforce control measure requirements." Although Fairfax County follows through on enforcement (Exhibit – 9), when construction inspectors were asked how they determined the length of time a construction site had to resolve a particular problem, the inspectors stated this was determined on a case by case basis. The Inspector's Handbook includes a recommended schedule for compliance, but the inspectors did not state they were using the handbook to enforce compliance schedules.

Part I.C.1 – Watershed Monitoring Programs

Observation 7 Additionally, Fairfax County is also developing and implementing watershed management plans across the county. At the time of the EPA inspection, plans had been developed for 12 watersheds. The Watershed Monitoring plans include locations and stations determined on the characteristics of land use, drainage area and number of tributaries of watershed. The plans take a comprehensive community-wide approach to restoring and protecting county streams and have also been considered a head start in addressing Chesapeake Bay goals and local total maximum daily loads. The plan development process involved watershed characterization efforts and multiple opportunities for public involvement. The plans focus on structural improvements and non-structural solutions and overall include a 25-year prioritized list of proposed projects. Sample type, collection, and analysis of the monitoring conform to the conditions of the Permit and include a measurements of chemicals, bioassessments and floatables

Part I.C..1 – Watershed Monitoring Programs (continued)

A number of projects have already been completed including restoration of multiple stream segments, outfall restoration, best management practice retrofits, and installation of low impact development practices. As part of the plans, the county has also implemented a water resources monitoring network including 14 sites throughout the county generating long-term monitoring data. Fairfax County will evaluate the impacts of BMP implementation using the monitoring data. Fairfax County has also calculated the cost per pound of nutrient and sediment load reduction for each project category based on the projects already implemented.

Part I.C..1 – Annual Reports

Observation 8 On a timely manner, Fairfax County has submitted Annual Reports for each year that contain pertinent information for assessing compliance with the Permit.

Additional Comments

Stream Restorations

Observation 9 Although there are no “stream restoration” requirements in the Permit, Fairfax County has invested considerable approximately \$2.4 million for year 2011.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 26 2012

Mr. Craig Carinci, Director
Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 449
Fairfax, VA 22035

Re: Administrative Order - Docket No. CWA-03-2013-0024DN

Dear Mr. Carinci:

Enclosed is an Administrative Order (Order) issued this date pursuant to Section 309(a) of the Act, as amended, 33 U.S.C. § 1319(a). This Order supersedes Administrative Order CWA-03-2012-0077DN and was necessary to correct the date of the inspection provided in paragraph 2. The Order contains findings that Fairfax County has violated Section 301 of the Act, 33 U.S.C §§ 1311. You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order may result in additional enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

Fairfax County has the right to request a hearing regarding the violations alleged in the Order. Such request should be included with the Answer to this Order and must also be made within thirty (30) days of receipt of this letter and Order.

Whether or not a hearing is requested, we invite Fairfax County to confer informally with EPA concerning the alleged violations. Fairfax County may represent itself, or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the EPA Office of Regional Counsel will normally be present at any informal conference. The attorney assigned to this matter is:

Judy Hykel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
215-814-2646



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A request for an informal conference does not extend the thirty (30) day period by which Fairfax County must request, or waive a hearing.

If Fairfax County is a "small business" under the Small Business Regulatory Enforcement Fairness Act (SBREFA), you should review the enclosed information sheet, which provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also information on compliance assistance. Any decision to participate in such program or to seek compliance assistance does not relieve Fairfax County of its obligation to respond in a timely manner to this enforcement action, does not create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve its legal rights, Fairfax County must comply with all rules governing the administrative enforcement process. The Ombudsman and does not participate in the resolution of EPA's enforcement actions.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Anne Crosier, VADCR
Doug Fritz, VADCR



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2012 OCT 26 PM 6:08

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

IN THE MATTER OF:

Fairfax County, Virginia
Department of Public Works
& Environmental Services
12000 Government Center Parkway,
Suite 449
Fairfax, VA 22035,

Docket No. CWA-03-2013-0024DN

**FINDINGS OF VIOLATION &
ORDER FOR COMPLIANCE**

Respondent

I. STATUTORY AUTHORITY

1. This Order for Compliance ("Order") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. Section 1319(a). The Administrator has delegated these authorities to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source by a person into a water of the United States except in compliance with a permit issued under the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
3. The Fairfax County (hereinafter "Respondent") is a political subdivision of the state of Virginia and is therefore a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. Section 402 of the Act, 33 U.S.C. § 1342, establishes the NPDES program. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.

5. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the State of Virginia has an EPA-approved NPDES program administered by the Virginia Department of Conservation and Recreation ("VADCR").
6. "Discharge of a pollutant" includes additions of pollutants to the waters of the United States through "pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works" 40 C.F.R. § 122.2. At all times relevant to this complaint, Respondent, a municipality, owned and operated a Municipal Separate Storm Sewer System ("MS4") as that term is defined in 40 C.F.R. § 122.26, which is such a conveyance.
7. The term "municipal separate storm sewer system" (MS4) includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
8. Respondent's MS4 is located within the geographic boundaries of Fairfax County, Virginia.
9. Stormwater from Respondent's MS4 drains into 15 major streams: Accotink Creek, Bull Run, Cameron Run (Hunting Creek), Cub Run, Difficult Run, Dogue Creek, Four Mile Run, Horsepen Run, Little Hunting Creek, Little Rocky Run, Occoquan River, Pimmit Run, Pohick Creek, Popes Head Creek, Sugarland Run, and various other minor streams, which are "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
10. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(c) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
11. The NPDES Permit No VA0088587 was issued on January 24, 2002 ("2002 Permit").
12. On June 8-9, 2011, the EPA Region III and its duly-authorized representatives conducted an inspection (the "June 2011 Inspection") of Respondent's MS4 Program to evaluate compliance with the General Permit and the 2005 Storm Water Management plan ("SWMP"). The EPA findings of the June 2011 Inspection are documented in a June 2011 Inspection Report ("EPA Inspection Report")

III. EPA FINDINGS AND CONCLUSIONS OF LAW

Failure to fully develop and implement a program for Industrial and High Risk Stormwater Runoff

13. Part I.B.1.h of the Permit requires Respondent to develop and implement a program to identify and control pollutants from Industrial & High Risk Runoff discharges into its MS4.
14. EPA determined during the June 2011 Inspection (EPA Inspection Report Observation #4) that Respondent's inspectors were not identifying sources of pollutants or assessing management practices for controlling pollutants, from Industrial & High Risk Runoff discharges that may enter the MS4.
15. Respondent's failure to develop and implement a program to identify and control pollutants from Industrial & High Risk Runoff discharges into its MS4 are violations of Part I.B.1.h of the 2002 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Failure to Fully Implement the Stormwater Management Program for Construction Sites

16. Part I.B.1.i.2 of the 2002 Permit requires Respondent to implement a program to reduce the discharge of pollutants from certain construction sites that includes inspecting construction sites and enforcing control measure requirements.
17. The Fairfax Storm Water Management Plan, (page 36, Governing Policy, the 6th bullet item) identifies the VADCR Erosion and Sediment Control Handbook as establishing minimum design and implementation standards for E&S control measures in Fairfax County.
18. The VADCR Erosion and Sediment Control Handbook (Chapter 7. Administrative Guidelines, paragraph A.2 under Inspections) requires inspection reports to contain comments concerning compliance or non-compliance and notes of any verbal communications concerning the project.
19. EPA determined during its June 2011 Inspection (EPA Inspection Report – Observation #6) that at times during inspections, Fairfax County construction site inspectors have not documented their observations concerning compliance or non-compliance, and have not documented changes they make to the erosion and sediment control plans, as a required by the program established in the VADCR Erosion and Sediment Control Handbook.
20. Respondent's failure to implement its SWMP requirements established in the VADCR Erosion and Sediment Control Handbook is a violation of Part I.B.1.i.2 of the 2002 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. ORDER

AND NOW, this 26th day of October, 2012, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a) to do the following:

21. The Respondent shall:

- a. Immediately takes steps (e.g., revisions to SOPs, additional training, expanded resources) to ensure that inspectors identify sources of pollutants, and assess management practices for controlling pollutants from Industrial & High Risk Runoff discharges that may enter the MS4; and
- b. Immediately take steps (e.g., revisions to SOPs, additional training, expanded resources) to ensure inspectors fully and accurately document their observations concerning compliance or non-compliance and any changes they make to erosion and sediment control plans during construction site inspections;
- c. Provide documentation describing the steps that are initiated to attain compliance with paragraphs 22. a. and 22.b.
- d. For all submittals to this Order, provide certification, signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
- e. Provide the information required in paragraphs 22.c and d. within sixty (60) days of receipt of this Order to

Chuck Schadel (3WP42)
Enforcement Officer
US EPA Region 3
NPDES Enforcement Branch
1650 Arch St
Philadelphia, Pa 19103
215. 814. 5761


VI. GENERAL PROVISIONS

23. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, 18 U.S.C. § 1001, and/or a civil judicial, action initiated by the EPA and the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject, to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
24. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.
25. Respondent shall permit EPA or its authorized representative to inspect any site under its control or authority at reasonable times to confirm that Respondent is in compliance with this Order and with any applicable permit. EPA reserves all existing inspection authority.
26. Violation of the terms and conditions of this Order constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.
27. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt> and states the scope of such review.

VII. EFFECTIVE DATE

28. This ORDER AND REQUEST is effective thirty (30) days after receipt unless modified or withdrawn.

Date: OCT 26 2012


Jon M. Capacasa, Director
Water Protection Division
EPA, Region III

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below the original of this Administrative Order (and copy) was hand-delivered to the Regional Hearing Clerk, EPA, Region III, and that true and correct copies were sent to the following persons:

Mr. Craig Carinci, Director
Storm Water Planning Division
Fairfax County
12000 Government Center Parkway, Suite 449
Fairfax, VA 22035

OCT 26 2012
Dated: -----



Charles A. Schadel
NPDES Enforcement Branch



**FAIRFAX COUNTY
MUNICIPAL SEPARATE STORM
SEWER SYSTEM (MS4)
INSPECTION**

**STORMWATER PLANNING DIVISION
DEPARTMENT OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
12000 GOVERNMENT CENTER PARKWAY, SUITE 449
FAIRFAX, VA 22035**

June 8 through 9, 2011

**Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region III
Water Protection Division
Office of NPDES Enforcement (3WP42)
1650 Arch Street
Philadelphia, PA 19103**

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Attachment 1: County of Fairfax's Permit (VA0088587)

Attachment 2: Sign-In Sheet

Attachment 3: Log of Exhibits

- Exhibit 1 – Public BMP Inspections
- Exhibit 2 – Private BMP Inspections
- Exhibit 3 – Dry Weather Screening
- Exhibit 4 – Fire Inspector's Report for the Davis Industries Inspection
Conducted on June 8, 2011
- Exhibit 5 – Active Construction Projects
- Exhibit 6 – Inspection Checklist for Erosion and Sediment Control Installation
from Fairfax County's *Handbook for Site Inspectors*
- Exhibit 7 – Erosion and Sediment Control Inspection Report (20/30 Form) for
Metro West Inspection Conducted on June 9, 2011
- Exhibit 8 – Excerpts from the SI2K database report for the Metro West –
Public Infrastructure Section Construction Site
- Exhibit 9 – Guidelines to Address Non-Conforming Erosion and Sediment
Controls from Fairfax County's *Handbook for Site Inspectors*

Attachment 4: Inspection Photograph Log

I. INTRODUCTION

From June 8 through 9, 2011, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of the County of Fairfax, Virginia. Discharges from the County's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088587, effective January 24, 2002 and an expiration date of 24 January 2007. The purpose of this inspection is to obtain information that EPA will use to evaluate compliance with the County's Permit VA0088587, which is included in Attachment 1.

Stormwater and Mr. Randy Bartlett, Director
Wastewater¹:

Stormwater Ms. Kate Bennett, MS4 Coordinator
Planning Mr. Craig Carinci, Director
Division: Ms. Takisha Cannon, Ecologist II
Mr. Fred Rose, Branch Chief

Land Mr. Assad Ayoubi, Director
Development Mr. Charles Craft, General Superintendent
Services: Mr. Bruce Nassimbeni
Mr. Skip Raynor, Supervising Engineering Inspector
Mr. Ken Williams, Chief, Plan and Document Control
Mr. Mike Ernst, Senior Engineering Inspector
Mr. Glenn Huffman, Supervising Engineering Inspector
Mr. Thomas French, Senior Engineering Inspector
Ms. Diana Guillen, Supervising Engineering Inspector

Maintenance Mr. Steve Aitcheson, Director
and Stormwater Mr. Bill Schell, Branch Chief
Management Mr. PJ Tierno, Engineer Tech III
Division: Ms. Karlee Copeland, Environmental Scientist
Mr. Keith Appler, GIS Analyst
Mr. Stuart Stein, Contractor (GKY)
Mr. Jason Gibson, Contractor (GKY)
Mr. Casey Kight, Contractor (GKY)

EPA Mr. Charles Schadel, EPA Region 3
Representatives: Ms. Kyle Zieba, EPA Region 3

Virginia DCR Mr. Kelly Vanover, Regional Manager
Representative: Ms. Marian Carrol, Stormwater Compliance Specialist
Mr. Mason Harper, MS4 Permit Writer
EPA Mr. John McCutcheon, Stormwater Compliance Manager
Contractors: Mr. Mark Briggs, ERG
Ms. Kavya Kasturi, ERG

¹ A copy of sign-sheets containing the names of all county participants in the inspection is included as Attachment 2.
Draft Enforcement Confidential – Do Not Cite Or Quote

EXECUTIVE SUMMARY

From June 8 through 9, 2011, a compliance inspection team comprised of staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of the County of Fairfax, Virginia. Discharges from the County's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088587, effective January 24, 2002. The purpose of this inspection was to evaluate compliance with the County's Permit VA0088587, which is included in Attachment 1.

Virginia Permit Number VA0088587 Requirement	Observations
I.B.1.a) – Structural and Source Control Measures	Observation 1 Public Storm Water Management (SWM) facilities and Best Management Practices (BMPs) ponds inspected at least once every two years and private SWM facilities and BMPs ponds inspected at least once during the permit cycle and in accordance with the Storm Water Management Plan for Fairfax County.
I.B.1.d) - Retrofitting	Observation 2 Permit Requirement is not prescriptive. However, Fairfax County has installed 34 retrofits in 2010. Estimated cost is at least \$11M. Fairfax County has conducted retrofits every year.

I.B.1.f) – Illicit Discharge and Improper Disposal	Observation 3 Representative outfalls of the entire MS4 have been screened at least once during the permit term.
I.B.1.h) – Industrial and High Risk Stormwater Runoff	Observation 4 Fairfax County did not have an industrial and commercial facility inspector. However, Fairfax County staff stated that pending legislation in Virginia will give authority to counties to conduct inspections at industrial and commercial facilities and expects to begin conducting inspections of industrial and commercial facilities once the legislation is effective. Although the Fire Marshall's office is performing fire inspections of industrial and commercial sites, the focus of these inspections is not related to stormwater.
	Observation 5 Fairfax County developed a program for implementing BMPs and inspecting County-owned facilities
I.B.1.i) – Construction Site Runoff	Observation 6 Fairfax County's E&S Program conducts inspections of priority sites at least once per week, after rain events and follows through on enforcement. Fairfax County's E&S Program is fully compliant with the State construction program. However, Fairfax County E&S inspectors are not consistently and completely following inspection procedures regarding documenting construction site inspections.

I.C.1. – Watershed Monitoring	Observation 7	Fairfax County is implementing the long-term monitoring plan that has been approved by DCR. The monitoring is being conducted at representative stations to characterize the quality of storm water in at least two watersheds during the term of this permit.
Part I.C.1 – Annual Reports	Observation 8	On a timely manner, Fairfax County has submitted Annual Reports for each year.
Stream Restorations	Observation 9	Although there are no “stream restoration” requirements in the Permit, Fairfax County has invested considerably. The overall budget is being raised to \$28 million for year 2011.

II. OBSERVATIONS

Part I.B.1.a.1) & 2) – Structural and Source Control Measures

Fairfax County shall inspect and maintain public Storm Water Management (SWM) facilities and Best Management Practice (BMP) ponds. The inspection and maintenance schedule in Permit No. VA0088587 will be determined by the Storm Water Management Plan for Fairfax County. At a minimum these facilities will be inspected and receive maintenance once during this permit.

Fairfax County shall inspect private Storm Water Management (SWM) facilities and Best Management Practice (BMP) ponds. The inspection schedule will be determined by the Storm Water Management Plan for Fairfax County. At a minimum these facilities will be inspected once during this permit cycle. Fairfax County shall require maintenance agreements for all privately maintained storm water management facilities and/or BMP ponds. Fairfax County shall assure proper function and maintenance of these facilities.

Observation 1 - Fairfax County has presented documentation (Exhibit 1 and Exhibit 2) that demonstrates that the public Storm Water Management (SWM) facilities and Best Management Practices (BMPs) ponds have been inspected at least once every two years and private SWM facilities and BMPs ponds have been inspected at least once during this permit cycle and in accordance with the Storm Water Management Plan for Fairfax County. Fairfax County requires maintenance agreements for all privately maintained storm water management facilities and/or BMP ponds. Fairfax County tracks maintenance efforts of public and private SWM facilities and BMP Ponds.

Part I.B.1.d) - Retrofitting

Receiving water quality impacts shall be assessed for all storm water management facilities. When the permittee determines water quality impact, they shall continue to evaluate and retrofit existing storm water management facilities and areas without stormwater controls.

Observation 2 The Permit requirement is not prescriptive. However, Fairfax County has installed 34 retrofits in 2010. Estimated cost is at least \$11 million. Fairfax County has conducted retrofits every year.

Part I.B.1.f) – Illicit Discharge and Improper Disposal

The Permit requires that a program to locate and eliminate illicit discharges and improper disposal into the MS4 shall be implemented. This program shall include dry weather screening activities (described in Part I.B.1.f.) to locate portions of the MS4 with suspected illicit discharges and improper disposal activities. Follow-up efforts to eliminate illicit discharges and improper disposal shall be prioritized on the basis of magnitude and nature of the suspected discharge; sensitivity of the receiving water; and/or other relevant factors.

Observation 3. Fairfax County has presented documentation that demonstrates a program to effectively locate and eliminate illicit discharges and improper disposal into the MS4. The documentation demonstrates that Fairfax County's program includes effective dry weather screening activities and appropriate documentation (Exhibit – 3). The program establishes priorities and schedules for screening representative outfalls of the entire MS4 at least once during the permit term.

Fairfax County did not have an industrial and commercial facility inspector, and was not utilizing resources within other municipal programs having legal authority for site entry to inspect industrial and commercial facilities with a high risk of contributing stormwater pollutants. Fairfax County stated there is current legislation in Virginia that will give authority to counties responsible for watershed management to conduct inspections at industrial facilities. This legislation is expected to become law by July 1, 2011 and Fairfax County will then begin conducting inspections of industrial and commercial facilities where high risk runoff may occur.

Part I.B.1.h – Industrial and High Risk Stormwater Runoff

A program shall be implemented to identify and control pollutants in storm water discharges to the MS4 (municipal landfills; other treatment, storage, or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal and recovery facilities; facilities that are subject to EPCRA Title III, Section 313) and any other industrial or commercial discharge the permittee determine are contributing a substantial pollutant loading to the MS4.

Observation 4 Although the Fire Marshal's office is performing fire inspections of industrial and commercial sites, including those submitting SARA Title III Tier II reports and/or having VPDES General Stormwater permits, the focus of the Fire Marshal's inspections is not related to stormwater. On June 8, 2011, the EPA inspection team shadowed a Fire Inspector from the Fairfax County Fire Marshal's office on an inspection of Davis Industries, (Exhibit – 4) an automobile recycling facility. The EPA inspection team accompanied the Fire Inspector to determine the level at which the Fire Inspector focused on stormwater-related issues. While at Davis Industries, the Fire Inspector stated she evaluates facilities regarding fire issues, but not does not look at the stormwater permit or the Stormwater Pollution Prevention Plan (SWPPP). According to the Inspector, she looks for issues such as electrical hazards, hazardous materials storage, flammable materials storage, and housekeeping issues that may hinder an engine company from fighting a fire at the facility. If spills or releases of hazardous materials (e.g., oil) are observed by the Fire Inspector, these issues are noted and the site is directed to mitigate the situation.

Part I.B.1.h – Industrial and High Risk Stormwater Runoff (continued)

During the inspection, the Fire Inspector did note a hazardous material spill (see Photograph 1 in Attachment 4) and directed the facility to clean up the release immediately. (Exhibit 4), the Fire Inspector's report for Davis Industries, shows the Fire Inspector's findings from the inspection.

The EPA inspection team observed open-top drums containing liquids; however, the Fire Inspector made no mention of the drums. Soils stained with iron oxide and likely other heavy metals were observed near the rail loading areas and appeared to be washing toward the rail lines and possibly into the swale opposite the rail tracks during storm events (see Photograph 2 in Attachment 4); however, these issues were not included in the Fire Inspector's report for Davis Industries.

Storm Water Management Program (SWMP), Appendix A – Stormwater Program Summary Tables, H. BMPS for Industrial and High Risk Stormwater Runoff

Fairfax County identified in its' SWMP that a master inventory of County-industrial facilities would be developed and maintained, and that appropriate storm water pollution prevention measures are in place.

- Observation 5 Fairfax County developed and implemented stormwater pollution prevention plans (SWPPPs) for each of the County-owned municipal garages and the transfer station. Weekly stormwater inspections are being conducted at the County-owned municipal garages and transfer stations and along with required stormwater sampling. Annual stormwater training is also provided to employees at the County-owned municipal garages and transfer station to ensure all employees are aware of the issues associated with out-door storage of materials and the need to quickly cleanup drips and spills of automotive fluids.

Part I.B.1.i – Construction Site Runoff

A program to reduce the discharge of pollutants from construction sites. Fairfax County's Erosion and Sedimentation Program (E&S Program) shall be fully approved by the Virginia Department of Conservation & Recreation (DCR).

- Observation 6 Fairfax County's E&S Program is fully compliant with the State construction program. Additionally, Fairfax County's program includes a site plan review process and construction site inspections (Exhibit - 5) to meet this requirement. However, Fairfax County construction site inspectors are not consistently and completely following inspection procedures with regard to completing construction site inspections documentation.

The EPA inspection team shadowed two construction site inspectors while they inspected two construction sites. While Fairfax County has a "Handbook for Site Inspectors" (hereafter, Inspector's Handbook) which directs the inspector to use its "Inspection Checklist for Erosion and Sediment Control Installation" (Exhibit - 6) to assist in inspections, the inspectors did not use this checklist in the field.

Part I.B.1.i – Construction Site Runoff (continued)

The Inspector's Handbook also includes the County's "Erosion & Sediment Control Inspection Report" form, referred to by the inspectors as the 20/30 form; however, based on discussion with County staff, the inspectors only complete this form when problems are noted on site. An example of a completed 20/30 form is provided as Exhibit - 7.

The inspectors stated they may take notes in a notebook during the inspection; however, if no issues are noted, no other documentation is completed on site. One inspector also stated that he may make changes to the erosion and sediment control plan on site, but does not always document the changes.

While all inspections are documented in the SI2K Site Inspection 2000 database, (Exhibit – 8), the inspectors' notes are not consistent in format or detail. For example, multiple inspectors have conducted construction site inspections at the Metro West Site - Public Infrastructure Section. In some cases, inspectors simply selected that an erosion and sediment control inspection has been conducted but did not provide any details in the notes field.

In other cases, an inspector simply listed "CE" or "SF" referring to construction entrance and silt fence, respectively, without specifying whether this meant that these controls were checked and adequate or whether there were issues. Another inspector listed the items that were checked and stated that the items were adequate. Another inspector provided detailed notes on what he or she did during the inspection and the status of the controls.

Part I.B.1.i.2 of the permit requires Fairfax County to "inspect construction sites and enforce control measure requirements." Although Fairfax County follows through on enforcement (Exhibit – 9), when construction inspectors were asked how they determined the length of time a construction site had to resolve a particular problem, the inspectors stated this was determined on a case by case basis. The Inspector's Handbook includes a recommended schedule for compliance, but the inspectors did not state they were using the handbook to enforce compliance schedules.

Part I.C.1 – Watershed Monitoring Programs

Observation 7 Additionally, Fairfax County is also developing and implementing watershed management plans across the county. At the time of the EPA inspection, plans had been developed for 12 watersheds. The Watershed Monitoring plans include locations and stations determined on the characteristics of land use, drainage area and number of tributaries of watershed. The plans take a comprehensive community-wide approach to restoring and protecting county streams and have also been considered a head start in addressing Chesapeake Bay goals and local total maximum daily loads. The plan development process involved watershed characterization efforts and multiple opportunities for public involvement. The plans focus on structural improvements and non-structural solutions and overall include a 25-year prioritized list of proposed projects. Sample type, collection, and analysis of the monitoring conform to the conditions of the Permit and include a measurements of chemicals, bioassessments and floatables

Part I.C..1 – Watershed Monitoring Programs (continued)

A number of projects have already been completed including restoration of multiple stream segments, outfall restoration, best management practice retrofits, and installation of low impact development practices. As part of the plans, the county has also implemented a water resources monitoring network including 14 sites throughout the county generating long-term monitoring data. Fairfax County will evaluate the impacts of BMP implementation using the monitoring data. Fairfax County has also calculated the cost per pound of nutrient and sediment load reduction for each project category based on the projects already implemented.

Part I.C..1 – Annual Reports

Observation 8 On a timely manner, Fairfax County has submitted Annual Reports for each year that contain pertinent information for assessing compliance with the Permit.

Additional Comments

Stream Restorations

Observation 9 Although there are no “stream restoration” requirements in the Permit, Fairfax County has invested considerable approximately \$2.4 million for year 2011.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Colonel Paul Brooks
Garrison Commander
United States Army Garrison, Fort Lee
Department of the Army
Suite 208
3312 A Avenue
Fort Lee, VA 23801-1720

AUG 15 2013

Re: General Permit VAR 04 - General Permit for Discharges of Stormwater from Small
Municipal Separate Storm Sewer Systems
Permit Registration No. VAR040007

Dear Colonel Brooks:

On January 25-26, 2012, the United States Environmental Protection Agency (EPA) and an EPA contractor, PG Environmental, LLC, along with representatives of the Virginia Department of Conservation and Recreation (VADCR) conducted an inspection of the United States Army Garrison, Fort Lee (Fort Lee) for the purpose of assessing compliance with the requirements of the above-referenced General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4 General Permit).

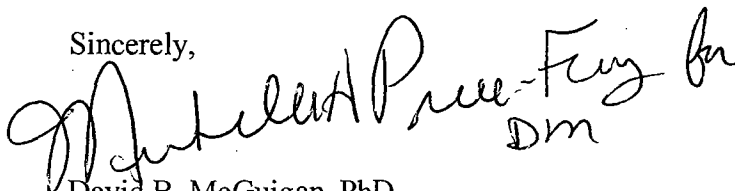
On January 15, 2013, EPA notified Fort Lee of EPA's findings and provided a copy of the inspection report. Deficiencies were identified in the implementation of the MS4 General Permit requirements, including, but not limited to: 1) development and maintenance of an updated storm sewer system map that shows the location of all known outfalls of the MS4; 2) development of procedures to detect and address nonstormwater discharges to the MS4; 3) development and implementation of a formal process to conduct and document construction site plan reviews, 4) development and implementation of procedures for the inspection and enforcement of stormwater controls at construction sites, and 5) development of a procedure for the review, approval and monitoring/assessment of post construction stormwater best management practices (BMPs).

Since that time, EPA has been working with Fort Lee's Environmental Management Office (EMO) staff in order to address the issues identified in our inspection report and January 15, 2013 letter. An e-mail sent from Craig Norris of EMO to Peter Gold of EPA on June 20, 2013 documented how Fort Lee was addressing these issues. In order to address the issues associated with construction site storm water and erosion control, illicit discharge detection and elimination and post construction BMP inspection programs, modifications were made to Fort Lee's standard operating procedures (SOPs) for these programs. A new garrison policy was issued to prohibit illicit discharges. An outfall inventory



was conducted to insure the mapping of all outfalls. These changes were memorialized in Fort Lee's General Permit Registration Statement with VADCR. EPA appreciates the prompt response and cooperation by Fort Lee personnel and considers this matter closed. Please note that EPA may revisit this matter in the event of any future noncompliance with a National Pollutant Discharge Elimination System permit or the Clean Water Act. Please feel free to contact me or have a member of your staff contact Peter Gold at gold.peter@epa.gov or 215-814-5236.

Sincerely,



David B. McGuigan, PhD.

Associate Director

Office of NPDES Permits and Enforcement

Water Protection Division

cc: Ginny Snead, VADEQ



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 28 2013

Mr. Phil Rodenberg
City of Fredericksburg
P.O. Box 7447
Fredericksburg, VA 22404

Re: Docket No. CWA-03-2013-0078DN
Administrative Order for Compliance and Request for Information

Dear Mr. Rodenberg:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the City of Fredericksburg submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the City: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the City of Fredericksburg has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.



If you require any information or assistance regarding this matter, please contact Peter Gold,
NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", with a long horizontal flourish extending to the right.

Jon M. Capacasa, Director
Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR
Jerome Brooks, VA DEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

City of Fredericksburg
715 Princess Anne Street
P.O. Box 7447
Fredericksburg, VA 22404

Docket No. CWA-03-2013-0078DN

**ORDER FOR COMPLIANCE
AND
INFORMATION REQUEST**

Respondent

I. STATUTORY AUTHORITY

- 1) This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- 2) Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.

- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.
- 6) On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- 11) "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:

- a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and
 - b) "Designed or used for collecting or conveying storm water. . ." 40 C.F.R. § 122.26(b)(8)(i).
- 13) A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
 - a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- 14) Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
 - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. *See also* 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- 16) Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . ."
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new

development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- 20) City of Fredericksburg, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Fredericksburg, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Rappahannock River/Motts Run, Rappahannock River, Massaponex Creek, Hazel Run and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Rappahannock River/Motts Run, Rappahannock River, Massaponex Creek, Hazel Run and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- 24) The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- 26) During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. VIOLATIONS

Count 1: MCM 1: Public Education and Outreach

- 27) Section II.B.1 of the Permit requires the Respondent to "implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff."

- 28) Section II.E.3.b. of the Permit requires the Respondent to include “the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures” in each of its annual reports.
- 29) Respondents MS4 Program Plan requires that: “Virginia is a leader in implementing urban nutrient management strategies in cooperation with private industry to reduce nutrient runoff from lawns, office parks, golf courses, and other developed lands. The City of Fredericksburg would like to participate and incorporate an Urban Nutrient Management Plan. The City will consider the implementation of an Urban Nutrient Management Plan in accordance with State guidelines.”
- 30) Based on EPA’s 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 2: Public Involvement/Participation

- 31) Section II.B.2.c of the Permit requires the Respondent to “participate, through promotion, sponsorship, or other involvement, in local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve water quality.”
- 32) Section II.E.3.b. of the Permit requires the Respondent to include “the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures” in each of its annual reports.
- 33) Respondents MS4 Program Plan requires that: “The City has endeavored to maintain effective communications and coordination with officials in Stafford County and at the University of Mary Washington. Numerous formal and communications are exchanged on a variety of topics throughout the year. The City will hold at least one meeting each year with Stafford County and University of Mary Washington officials to discuss stormwater quality issues.”
- 34) Based on EPA’s 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 3: MCM 3: Illicit Discharge Detection and Elimination

- 35) Section II.B.3.b of the Permit requires the Respondent to “develop, if not already completed, and maintain, an updated storm sewer system map, showing the location of all known outfalls of the regulated small MS4 including those physically interconnected to a regulated MS4, the associated surface waters and HUCs, and the names and locations of all impaired surface waters that receive discharges from those outfalls. The operator shall also estimate the acreage within the regulated small MS4 discharging to each HUC and impaired water.”
- 36) Section II.E.3.b. of the Permit requires the Respondent to include “the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures” in each of its annual reports.
- 37) Respondents MS4 Program Plan requires that: “A Storm Sewer Network map is being developed to provide the location of storm sewer outfalls into the Rappahannock River and the storm sewer infrastructure. The current focus is on identification of all outfall locations. Annually review the Storm Sewer Outfall map and add GPS coordinates of additional infrastructure components.”
- 38) Based on EPA’s 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 4: MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations

- 39) Section II.B.6 of the Permit requires the Respondent to “develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.”
- 40) Section II.E.3.b. of the Permit requires the Respondent to include “the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures” in each of its annual reports.
- 41) Respondents MS4 Program Plan requires that: “An Environmental Management System, or EMS, is a set of management procedures that allow an organization to analyze control and reduce the environmental impacts of its activities, products and services and operate with greater efficiency and control. The City will maintain an E2 rating.”
- 42) Based on EPA’s 2011 File Review Respondent either:

- a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
- b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. CONCLUSIONS OF LAW

- 43) Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this 28th day of March, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

- 44) Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 45) Within thirty (30) days of the effective date of this Order, Respondent shall:
- a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or
 - b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold
U.S. EPA, Region III (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE
DCR Division of Stormwater Management
Office of Regulatory Programs Manager
Virginia Department of Conservation and Recreation
203 Governor Street, Suite 206
Richmond, VA 23219

- c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

VII. GENERAL PROVISIONS

- 46) Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- 47) Issuance of this Order and Request shall not be deemed an election by EPA to forego any civil or criminal action to seek civil penalties, fines, or other appropriate relief under the Act for the violations set forth in the Findings and Allegations.
- 48) Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

VIII. JUDICIAL REVIEW

- 49) Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.


IX. OPPORTUNITY TO CONFER

- 50) Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. EFFECTIVE DATE

- 51) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 28 2013


John M. Capacasa, Director
Water Protection Division
U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUN 24 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Thomas Calhoun
Vice President for Facilities
George Mason University
4400 University Drive
Fairfax, Virginia 22030

Re: Opportunity to Show Cause

Dear Mr. Calhoun:

This letter is in reference to an investigation the United States Environmental Protection Agency, Region III, (EPA or Agency) conducted of George Mason University's (GMU) implementation of the requirements of its National Pollutant Discharge Elimination System (NPDES) permit for discharges from its municipal separate storm sewer system (MS4). As you are aware, EPA and its contractors conducted an inspection of GMU's MS4 program on November 17 and 18, 2011. Based on the information currently available to EPA, EPA believes that GMU's MS4 program was not compliant with its NPDES permit.

CWA Violations Identified by EPA

Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311, prohibits the discharge of any pollutant from a point source to water of the United States except in compliance with, among other things, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975 pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). Permit VAR040106 (GMU's Permit) was made effective on July 9, 2008 to govern the discharge of storm water through GMU's MS4.



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*

During the November 17 and 18, 2011 inspection, the EPA inspection team identified the following violations of GMU's MS4 Permit:

1. Failure to Submit Registration Statement by Required Date.

Pursuant to 4 VAC 50-60-1230 A.1., the deadline for submitting a complete registration statement to the Virginia Department of Conservation and Recreation (VADCR) is "within 180 days of notice of designation, unless [VADCR] grants a later date." On March 29, 2007, and July 26, 2007, GMU was notified by VADCR that it must submit its complete registration statement, registration fee form, and a fee of \$600 on or prior to December 7, 2007, in order to continue permit coverage. VADCR's letter also stated that if not submitted by that date, permit coverage for GMU would lapse, and GMU could potentially be discharging without a permit. In a VADCR letter dated

December 18, 2007, 11 days after the required date of the submission, GMU was sent a final letter requesting that GMU submit the required information for continued permit coverage. On December 20, 2007, GMU submitted an incomplete registration statement. On May 29, 2008, VADCR sent GMU a letter requesting that a complete registration statement be submitted to VADCR by June 20, 2008. GMU finally complied with this request on June 12, 2008.

2. Failure to Submit Annual Reports by Required Date and Failure to Submit Completed Annual Reports.

Pursuant to Section II.E.3. of GMU's Permit, annual reports are due on or before October 1, with a reporting period of July 1 through June 30 of the previous reporting year. Given that GMU's Permit had an effective date of July 9, 2008, GMU's first annual report was due on or before October 1, 2009, with a reporting period from July 1, 2008 through June 30, 2009. GMU did not submit its first annual report until January 13, 2010. Furthermore, GMU's first annual report did not include an MS4 system map as required by the MS4 Program Plan.

GMU failed to submit its second annual report prior to its due date of October 1, 2010. On November 12, 2010, VADCR sent the University a letter stating that they had not yet received GMU's second annual report, and requested its submission by December 1, 2010. On March 4, 2011, GMU submitted an unsigned, incomplete second annual report to VADCR, again lacking the required MS4 system map.

3. Failure to Adopt a Regulatory Mechanism to Prohibit Non-Stormwater Discharges to the MS4.

Pursuant to Section II.B.3.c of GMU's Permit, GMU's MS4 Program shall "To the extent allowable under state, tribal or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions."

During the inspection, GMU's Land Development Engineer explained to the EPA Inspection Team that GMU had not yet adopted a regulatory mechanism to prohibit non-stormwater discharges to the MS4.

4. Failure to Enact Procedures for Receipt and Consideration of Information Submitted by the Public Regarding Construction Site Stormwater Runoff Control.

Pursuant to Section II.B.4.a.(4) of GMU's Permit, the procedures for construction site stormwater runoff control must include "Procedures for receipt and consideration of information submitted by the public." Additionally, the GMU's MS4 Program Plan requires the allowance "for information from the public to be reviewed in the Department of Environmental Quality/Environmental Impact Report forum and/or submitted through the website" along with the "Development of a response process for addressing all information in a timely manner." This was to have been done "by the implementation of the MS4" [Program Plan], and the annual reports were to have information regarding "total number of submissions [and] number of times corrective measures were taken."

The EPA Inspection Team requested such procedures for receipt and follow-up on complaints or other information submitted by the public regarding construction sites, but GMU did not provide the requested information. The GMU Land Development Engineer explained that complaints are received in a number of ways, including calls to the University Police Department, the Facilities and Community Relations Department, the University Environmental, Health, and Safety Office, or complaints to individual staff members directly. Additionally, the Land Development Engineer informed the EPA Inspection Team that GMU had no procedures in place to ensure that the complaints are routed to the group that is responsible for complying with Section II.B.4.a.(4) of GMU's Permit once a complaint is received.

5. Failure to Provide Stormwater Pollution Prevention Training to Employees.

Section II.B.6. of GMU's Permit requires GMU "Develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations." Additionally, the MS4 Program Plan states that there will be "Training for all safety and maintenance workers," which will be provided through "...classes, website or other materials of better ways to conduct maintenance and landscaping." Such employees would be trained "at a minimum, once a year or more often if required by the crew chief." Reports would contain "type of training materials used per training class, date(s) of training class, topic(s) covered, total number of employees trained per class, [and the] percentage of maintenance employees trained per class."

The EPA Inspection team requested records from the training sessions, including any training materials used. GMU furnished the EPA Inspection Team with a Hazard Communication Training presentation; however, the training did not include a stormwater component. GMU staff informed the EPA Inspection Team that GMU had not provided specific training to its employees regarding the prevention of stormwater pollution from GMU facilities and activities. Additionally, the Hazard Communication Training is given to new employees only, and does not include a component that addresses practices to prevent or reduce pollutant runoff from GMU operations.

Request to Show Cause

EPA believes that the issuance of an Administrative Complaint seeking assessment of a civil penalty of \$28,000 for the aforesaid violations is an appropriate enforcement response in this matter. EPA, however, would prefer to reach a negotiated settlement prior to the filing of a complaint. Settlements reached prior to the filing of a complaint typically offer benefits, such as avoidance of the costs of litigation as well as more flexibility in the type of settlement reached, such as a settlement that includes a Supplemental Environmental Project (for more information, please see EPA's Supplemental Environmental Project Policy, attached hereto). To that end, EPA is hereby providing GMU an opportunity to confer with the Agency in the hope that the parties can commence settlement discussions and resolve this matter without engaging in litigation.

If GMU is interested in resolving this matter prior to the filing of a complaint, GMU should respond in writing within **fourteen (14) calendar days** of receipt of this letter. EPA is prepared to meet with GMU representatives to further discuss the violations, potential penalties and settlement. Prior to the close of that first meeting, EPA expects that GMU will advise the Agency whether it is willing to make the required commitment to settle this case before litigation. In addition, a firm schedule for any continuing negotiations must be established prior to, or during, that first meeting and settlement negotiations resulting in a signed Consent Agreement and Final Order (CAFO) must be completed within **ninety (90) calendar days** of receipt of this letter. Any final settlement and CAFO will be subject to final approval by the Regional Administrator for EPA Region III or his designee.

EPA specifically reserves the right to use any and all enforcement tools at its disposal to address past and/or ongoing violations regardless of any ongoing discussions in response to this Letter to Show Cause. Please direct your written response as well as all questions and communications with respect to any matters addressed in this letter to the attorney assigned to represent EPA:

Mark Bolender
Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103
Tel: (215) 814-2642
bolender.mark@epa.gov

For your further information, please be advised that certain entities may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or local environmental laws. Please see the enclosed "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether GMU may be subject to such requirements.

I strongly encourage you to give this matter your full consideration. Please be aware that should GMU and EPA fail to reach a settlement agreement in this matter, EPA reserves the right to seek the maximum allowable penalty at law in litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: Jeffrey Selengut (VADCR)
Brad Glatfelter (GMU)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

George Mason University
4400 University Drive
Fairfax, Virginia 22030

Respondent

Proceeding to Assess a Class I
Administrative Penalty Pursuant to Section
309(g) of the Clean Water Act

Docket No.: CWA-03-2014-0006

**CONSENT AGREEMENT AND FINAL
ORDER**

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2014 JUL 10 AM 11:40

RECEIVED

I. PRELIMINARY STATEMENT AND STATUTORY AUTHORITY

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and George Mason University ("GMU" or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This Consent Agreement and Final Order ("CAFO") simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).
2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.
5. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.
6. Pursuant to 40 C.F.R. §122.26(a)(3), NPDES Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems ("MS4").
7. Respondent is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).
8. Respondent is therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
9. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
10. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." *Id.* § 122.26(b)(13).
11. "Small MS4" means all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; and (ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of [40 CFR§ 122.26], or designated under paragraph (a)(1)(v) of [40 CFR§ 122.26]. (iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. 40 C.F.R. § 122.26(b)(16) and (17).

12. GMU is a small MS4 within the meaning of 40 C.F.R. § 122.26(b)(16) and (17).
13. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975.
14. On July 9, 2008, VADEQ issued Permit VAR040106 (the "MS4 Permit") to GMU to govern the discharge of storm water through GMU's MS4.
15. On November 17 and 18, 2011 EPA conducted an inspection of GMU's MS4 Program to determine GMU's compliance with Permit VA0088633.

III. FINDINGS OF VIOLATION

Failure to Submit Annual Reports by Required Date

16. Pursuant to Section II.E.3. of GMU's Permit, annual reports are due on or before October 1, with a reporting period of July 1 through June 30 of the previous reporting year.
17. Based on the July 9, 2008 effective date of GMU's Permit, GMU's first annual report was due on or before October 1, 2009.
18. GMU did not submit its first annual report until January 13, 2010.
19. GMU's second annual report was due on or before October 1, 2010.
20. GMU submitted its second annual report on March 4, 2011.
21. By failing to submit its annual reports by the required dates, GMU was in violation of GMU's Permit.

Failure to Adopt a Regulatory Mechanism to Prohibit Non-Stormwater Discharges to the MS4.

22. Pursuant to Section II.B.3.c of GMU's Permit, GMU's MS4 Program shall "To the extent allowable under state, tribal or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions."
23. During the inspection, GMU's Land Development Engineer explained to the EPA Inspection Team that GMU had not yet adopted a regulatory mechanism to prohibit non-stormwater discharges to the MS4.
24. By failing to adopt a regulatory mechanism to prohibit non-stormwater discharges to the MS4, GMU was in violation of GMU's Permit.

Failure to Enact Procedures for Receipt and Consideration of Information Submitted by the Public Regarding Construction Site Stormwater Runoff Control.

25. Pursuant to Section II.B.4.a.(4) of GMU's Permit, the procedures for construction site stormwater runoff control must include "Procedures for receipt and consideration of information submitted by the public."
26. During the Inspection, the EPA Inspection Team requested such procedures for receipt and consideration of information submitted by the public. GMU did not provide the requested information. Further, GMU's Land Development Engineer informed the EPA Inspection Team that GMU had no procedures in place to ensure that the complaints are routed to the group that is responsible for complying with Section II.B.4.a.(4) of GMU's Permit once a complaint is received.
27. By failing to enact procedures for the receipt and consideration of information submitted by the public regarding construction site stormwater runoff control, GMU was in violation of GMU's Permit.
28. Respondent's failure to comply with the Permit by failing to comply with the above requirements violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

29. Respondent admits the jurisdictional allegations of the Complaint and the Findings of Fact and Conclusions of Law set forth in Section II, above.
30. Respondent neither admits nor denies EPA's Findings of Violation set forth in Section III, above.
31. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
32. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
33. Each party to this action shall bear its own costs and attorney fees.
34. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
35. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
36. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate Virginia official.

37. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **twelve thousand dollars (\$12,000)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.
38. Respondent shall pay the total civil penalty of **twelve thousand dollars (\$12,000)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, CWA-03-2014-0006, Payment shall be made by one of the following methods set forth below:

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: (513) 487-2091

By overnight delivery:

U.S. Bank
Government Lock Box 979077
US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS NWD
26 W. M.L. King Drive
Cincinnati, OH 45268 0001

By Wire Transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking

Contact for ACH: John Schmid (202-874-7026)
Remittance Express (REX): 1-866-234-5681

On-Line Payments:

WWW.PAY.GOV
Enter sfo 1.1 in the search field. Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Mark Bolender, Esquire

Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

39. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.
40. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

41. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
42. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

43. The penalty specified in Paragraph 38, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

VI. GENERAL PROVISIONS

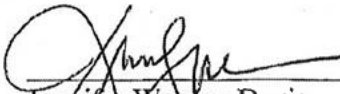
44. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
45. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
46. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

VII. PUBLIC NOTICE AND EFFECTIVE DATE

47. This CAFO will be issued after a forty (40) day notice period, execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. It will become final and effective thirty (30) days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date.

FOR RESPONDENT, GEORGE MASON UNIVERSITY:

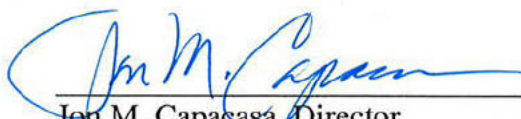
Date: 3/28/2014



Jennifer Wagner Davis
Senior Vice President for Administration
and Finance

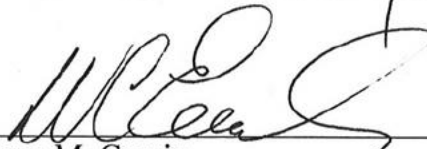
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: APR 10 2014


Jon M. Capacasa, Director
Water Protection Division
U.S. EPA Region III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 1ST day of July, 2014



Shawn M. Garvin
Regional Administrator
U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In The Matter of

City of Hampton
22 Lincoln St., 4th Floor City Hall
Hampton, VA 23669

Proceeding Under Sections 308 and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318
and 1319(a)

FINDINGS OF VIOLATION
ORDER FOR COMPLIANCE
AND
REQUEST FOR INFORMATION

RECEIVED

2011 SEP 28 PM 3:20

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

I. STATUTORY AUTHORITY

1. The following Findings of Violation and Order for Compliance ("Order") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "the Act"). The Information Request is issued under the authority vested in EPA by Section 308 of the CWA, 33 U.S.C. § 1318. The Administrator of EPA has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated it to the Director of the Water Protection Division of EPA Region III.

II. BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with specified requirements of the Act, including a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342 and 40 C.F.R. Part 122.
3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(a), the Commonwealth of Virginia has been authorized by EPA to administer the NPDES program within the Commonwealth of Virginia.
5. Pursuant to Section 309(a)(1) of the Act, 33 U.S.C. § 1319(a)(1), EPA is authorized to enforce the terms of any permit issued by a State under an EPA- approved permit program.
6. A NPDES permit is required for discharges from, among other entities, a large or medium municipal separate storm sewer system, 40 C.F.R. §122.26(a).
7. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).
8. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
9. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
10. The City of Hampton, Virginia (“Respondent” or “Hampton”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
11. Respondent owns, and through its Department of Public Works, Fire Department, Codes Compliance Department, Planning Department, Parks Department, the Hampton Clean City Commission, Fleet Maintenance Department and the 311 Call Center, operates a MS4 located in the City of Hampton, VA.
12. Hampton was issued a Virginia Pollution Discharge Elimination System Permit, VA0088633 (the “MS4 Permit”) which regulates discharges from Hampton’s MS4 by the Virginia Department of Environmental Quality (“VA DEQ”). The MS4 Permit has an effective date of March 8, 2001 and an expiration date of March 8, 2006. In January of 2005, administration of the MS4 program was transferred from VA DEQ to the Virginia Department of Conservation and Recreation (“DCR”). DCR has not yet issued a new MS4 permit to Hampton; therefore, Hampton is currently operating under the conditions of MS4 Permit VA0088633.

13. From March 31-April 1, 2010, a compliance inspection team comprising of authorized representatives of EPA and DCR inspected the MS4 in Hampton. During this inspection, EPA and DCR reviewed Respondent's MS4 program.
14. As part of its application for an MS4 permit, Hampton developed a Storm Water Management Program (the "MS4 Plan") pursuant to 40 C.F.R. 122.26(d)(2)(iv)(A)(2), which requires "A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment."
15. Part I.A.1.a (2) of the MS4 Permit requires that Hampton adhere to and enforce the MS4 Plan.

III. FINDINGS OF VIOLATION

Violation I: Failure to Maintain Records of Site Plan Reviews

16. Section 7.2.2 of the MS4 Plan requires that development site plans be reviewed for consistency with City and State water quality requirements.
17. Section 7.2.2 of the MS4 Program Plan requires the Department of Public Works Land Development Services to maintain site plans on file with records of review.
18. Prior to EPA's inspection, the EPA inspection team requested records of site plan reviews. Hampton did not produce any records of site plan reviews prior to or during EPA's inspection.
19. By not maintaining records of site plan reviews, Hampton violated Part I.A.1.a (2) of its MS4 Permit.

Violation II: Failure to Implement the Current Field Screening Procedures

20. Part I.A.1.b(2) of Hampton's MS4 Permit requires Hampton to continue the implementation of the current field screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm water system. Hampton's current field screening procedures are embodied in the Field Screening Plan and Procedures Manual, which is Appendix C of the MS4 Plan.
21. Section F of the Field Screening Plan and Procedures Manual provides that if testing results in any values that are a cause for concern, a retest of that constituent must be immediately conducted. If a second test shows substantially different results, a third test

must be done. All results must be recorded. If the second test verifies the first test, or if the third test still shows values which are a cause for concern, a sample must be taken immediately for laboratory verification.

22. The City Storm Water Manager verbally told the EPA inspection team that a pH value less than or equal to 5.0 standard units ("s.u.") was the City's cause for concern threshold. At 8:15 a.m. on March 11, 2009, a pH value of 5.1 s.u. was recorded during field screening of an observed dry weather flow at 106 Garrett Drive. At 2:00 pm, the City staff returned to 106 Garrett Drive, conducted another test and found a pH level of 4.7 s.u., which exceeds the cause for concern threshold of 5.0 s.u. City staff did not immediately take another test to address the discrepancy between the two results.
23. By not taking an additional test immediately after the second test indicated a pH level that met the cause for concern threshold, Hampton failed to implement the Field Screening Plan and Procedures Manual, and therefore violated Hampton's MS4 Permit.

Violation III: Failure to Adhere to Storm Water Related Ordinances

24. Part I.A.1.a(2) of the MS4 Permit requires Hampton to adhere to all storm water related ordinances.
25. Hampton City Ordinance Section 33.1-12.1 states that it is unlawful to put, throw, place or deposit or allow to be put, thrown, placed or deposited any substance or pollutant in any area which drains into the storm water system or in any manner pollute the storm water system.
26. During the EPA inspection, the EPA inspection team observed a city official washing a police car at City Fleet Services Center, and the resulting wash-water flow entering a storm water inlet.
27. During the EPA inspection, the EPA inspection team also observed the application of herbicides to the brick sidewalks around City Hall at 22 Lincoln Street, which drain to MS4 inlets nearby. The application of herbicides was not selective and covered the entire brick sidewalk surface. A City Parks and Recreation Department staff member explained to the EPA inspection team that the herbicides consisted of a mixture of Roundup and a marking chalk that turned the sidewalks yellow so that staff could see where the mixture had been applied. The City Parks and Recreation Department staff member indicated that the marking chalk colorants and herbicides would wash away into the MS4 inlets during the next rain event.
28. By failing to adhere to Hampton City Ordinance Section 33.1-12.1, Hampton violated its MS4 Permit.

Violation IV: Failure to Develop Written Standard Operating Procedures for Illicit

Discharge Source Identification

29. Hampton's MS4 Plan Section 5.2.3 requires that written standard operating procedures for illicit discharge source identification be developed in the second year of the permit cycle.
30. Hampton obtained its current MS4 permit on March 8, 2001. The permit was effective on that date. Accordingly, standard operating procedures should have been developed in the second year of the permit cycle, between March 9, 2002 and March 8, 2003.
31. By not developing written standard operating procedures for illicit discharge source identification by March 8, 2003, Hampton violated its MS4 Permit.

Violation V: Failure to Provide Copies of Erosion and Sediment Control Inspection Reports to Construction Site Contractors

32. Hampton's MS4 Plan Section 6.3.1 requires that copies of erosion and sediment control inspection reports are provided to construction site contractors.
33. During the EPA Inspection, Hampton's Erosion and Sediment Control Inspector admitted that he does not provide copies of erosion and sediment control inspection reports to construction site contractors.
34. By not providing copies of erosion and sediment control inspection reports to construction site contractors, Hampton violated its MS4 Permit.

Violation VI: Failure to Conduct Erosion and Sediment Control Inspections of Construction Sites at Required Frequency

35. Hampton's MS4 Plan Section 6.3.1 requires that erosion and sediment control inspectors perform inspections in accordance with State requirements.
36. 4 VAC 50-30-60.B. requires, in relevant part, Hampton to perform periodic inspections at least once in every two-week period [and] within 48 hours following any runoff producing storm event, unless an alternative inspection program is approved by the Virginia Soil and Water Conservation Board prior to implementation.
37. Hampton does not have an alternative inspection program that has been approved by the Virginia Soil and Water Conservation Board.

38. During the EPA Inspection, Hampton's Erosion and Sediment Control Inspector admitted that all construction sites within Hampton are not inspected at least once in every two-week period [and] within 48 hours following any runoff producing storm event.
39. By not providing inspecting all construction sites at least once in every two-week period [and] within 48 hours following any runoff producing storm event, Hampton violated its MS4 Permit.

IV. ORDER

40. AND NOW, this 28th day of September, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), to do the following:
41. Within thirty (30) days of the effective date of this Order, Respondent shall comply with VPDES Permit No. VA0088633.
42. Within fourteen (14) days of the effective date of this Order, Respondent shall submit to EPA certification of Respondent's intent to comply with this Order. A principal executive officer or a ranking elected official must sign on behalf of the Respondent. The certification shall be submitted to:

Andrew Dinsmore (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. REQUEST FOR INFORMATION

43. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
 - (a) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the CWA;
 - (b) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - (c) any requirement under Section 308 of the CWA; and
 - (d) carrying out Sections 305, 311, 402, 404, and 504 of the CWA.

44. Failure to respond as directed to a CWA Section 308 request is punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment. Providing misleading or false information may subject you to civil and criminal sanctions. The information you provide may be used by EPA in administrative, civil or criminal proceedings.
45. You may, if you desire, assert a business confidentiality claim covering all or part of the information requested herein in the manner described in 40 C.F.R. Part 2 Subsection B. Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If no claim of confidentiality accompanies the information requested herein when it is received by EPA, it may be made available to the public by EPA without further notice. You may not withhold any information from EPA on the grounds that it is confidential business information. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act U.S.C. Chapter 35. (See 5 C.F.R. Section 1320.3(c)).

Instructions

46. Identify each person responding to any question contained in this Information Request on behalf of the Respondent, as well as each person consulted in the preparation of the response.
47. For each question, identify each document consulted, examined, or referred to in the preparation of the response or that contains information responsive to the question, and provide a true and correct copy of each such document if not provided in response to another specific question.
48. Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the question to which it corresponds.
49. To the extent information requested herein was previously provided to EPA by City of Hampton, there is no need to provide it again, but rather identify the information and the date it was previously provided.
50. If requested information or documents are not known or are not available at the time of your response to this Information Request, but later become known or available, the Respondent must supplement its response to EPA. Moreover, should the Respondent find at any time after submission of its response that any portion is or becomes false, incomplete, or misrepresents any facts, the Respondent must provide EPA with a corrected response as soon as possible.

51. All submissions provided pursuant to this request shall be signed and dated by a principal executive officer or a ranking elected official to include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I certify as having responsibility for the persons who, acting under my direct instruction, made the verification that this information is true, accurate, and complete."

Signed _____
Title _____

52. Submit your response to the following individual:

Andrew Dinsmore (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

53. If you have questions regarding this Information Request, you may contact Mark Bolender of the Office of Regional Counsel at (215) 814-2642.

Definitions

54. The term "identify" with respect to a natural person means to provide that person's name, address, telephone number, title, and relationship to Respondent. The term "identify" with respect to a business entity means to provide that entity's name, address, and relationship to the Respondent, and to provide the name, address, telephone number, and title of an individual who can provide information related to, and on behalf of, the entity.

Request

55. AND NOW, this 28th day of September, 2011, Respondent is hereby directed, pursuant to Section 308 of the CWA, 33 U.S.C. Section 1318, to provide the following information:
56. Provide all information regarding annual storm water training for employees and identify all employees who receive annual storm water training.
57. Identify all employees, contractors, and subcontractors responsible for applying pesticides, and indicate whether such individuals have received training on pesticide application and/or state certification. Provide all other information regarding pesticide application training for employees.

58. Identify all employees responsible for performing storm water inspections at industrial facilities. Provide all information about storm water training such individuals have received
59. Provide all information regarding all Best Management Practices maintenance inspections that occurred on March 5, 2010, including the number of inspections conducted, the location of each inspection, any maintenance and repair needs found during such inspections, and all documentation of such inspections.
60. Provide the list of facilities that meet the categories defined in Part I.a.1.c. of Hampton's MS4 Permit. Specify those facilities that were identified upon the list creation (or at the time of MS4 Permit issuance, whichever is later), as well as the dates when new or previously unidentified facilities were added to the list. Provide all information about any storm water inspections at such facilities.
61. Provide all information regarding construction site erosion and sediment control inspection tracking, including the frequency at which inspections are conducted.
62. Your response must be submitted within 30 days of receipt of this Request for Information.

VI. GENERAL PROVISIONS

63. Issuance of this Finding of Violation, Order for Compliance, and Request for Information shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply with this Order or the Act may result in a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent will be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
64. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans pursuant to Section 508 of the Act.
65. Respondent shall permit EPA or its authorized representative to inspect any site at reasonable times to confirm that Respondent is in compliance with this Order and with any applicable permit. EPA reserves all existing inspection authority.

66. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve Respondent of their obligations to comply with any applicable Federal, state, or local law or regulation.
67. Violation of the terms and conditions of this Finding of Violation, Order for Compliance, and Request for Information constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

EFFECTIVE DATE

This FINDINGS OF VIOLATION, ORDER FOR COMPLIANCE, AND REQUEST FOR INFORMATION is effective upon receipt.

Date: 9/28/11



John M. Capadusa, Director
Water Protection Division
EPA Region III



**CITY OF HAMPTON
MUNICIPAL SEPARATE STORM
SEWER SYSTEM (MS4)
INSPECTION**

HAMPTON
DEPARTMENT OF PUBLIC WORKS
22 LINCOLN ST.
4TH FLOOR CITY HALL
HAMPTON, VA 23669

**FINAL
JULY 2010**

**U.S. Environmental Protection Agency, Region III
Water Protection Division
Office of NPDES Enforcement (3WP42)
1650 Arch Street
Philadelphia, PA 19103**

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EXECUTIVE SUMMARY

Municipal Separate Storm Sewer System (MS4) Inspection Report Hampton, Virginia

From March 31 through April 1, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, inspected the municipal separate storm sewer system (MS4) program of the City of Hampton, Virginia. Discharges from the City's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088633, effective March 8, 2001. The purpose of this inspection was to evaluate compliance with the City's Permit VA0088633, which is included in Attachment 1. The inspection focused specifically on the following sections of the Permit in relation to the City's MS4 program: (1) Part I.A.1.a Structural and Source Control Measures; (2) Part I.A.1.b Unauthorized Discharges and Improper Disposal; (3) Part I.A.1.c Runoff from Industrial and Commercial Facilities; and (4) Part I.A.1.d Runoff from Construction Sites.

Based on the information obtained and reviewed, the EPA's compliance inspection team made several observations concerning the City's MS4 program related to the specific permit requirements evaluated. Table 1 summarizes the Permit requirements and the observations noted by the inspection team.

Table 1. Observations Identified During the Hampton Inspection (3/31/10 – 4/1/10)

Virginia Permit Number VA0088633 Requirement	Observations
I.A.1.a – Structural and Source Control Measures	Observation 1. The City of Hampton did not have a written SOP for stormwater site plan review, nor was a review checklist documented for each project.
	Observation 2. The City of Hampton BMP maintenance inspectors have not thoroughly inspected all BMPs.
	Observation 3. The City of Hampton BMP maintenance inspectors did not notify property owners of BMP maintenance or repair needs immediately after each inspection.
	Observation 4. The City of Hampton's BMP maintenance inspection records did not provide detailed descriptions of unsatisfactory conditions and subsequent corrective activities.
	Observation 5. The City of Hampton did not have a comprehensive procedure or manual for conducting BMP maintenance inspections.
	Observation 6. The City of Hampton BMP maintenance inspectors did not demonstrate a thorough understanding of the BMP maintenance inspection procedures needed to ensure pollutants discharged to the MS4 system are reduced.
	Observation 7. The BMP tracking portion of the City of Hampton's Permit Administration and Reporting System (PARS) database was incomplete.

Table 1. Observations Identified During the Hampton Inspection (3/31/10 – 4/1/10)

Virginia Permit Number VA0088633 Requirement	Observations
	<p>Observation 8. The City of Hampton BMP maintenance inspectors did not verify pond storage capacity (sediment accumulation) during inspections.</p> <p>Observation 9. The City of Hampton did not protect the MS4 system from the application of herbicides.</p>
I.A.1.b – Unauthorized Discharges and Improper Disposal	<p>Observation 10. The City of Hampton did not revise the language of the City’s Stormwater Management Ordinance.</p> <p>Observation 11. The City of Hampton did not conduct investigation and follow-up to a dry weather field screening trigger at 106 Garrett Drive.</p> <p>Observation 12. The City of Hampton did not have written procedures for illicit discharge tracking, source identification, elimination, or enforcement.</p>
I.A.1.c – Runoff from Industrial and Commercial Facilities	<p>Observation 13. Aside from the Virginia Statewide Fire Prevention Code, the City of Hampton had not established legal authority to inspect private industrial and commercial businesses for stormwater purposes.</p> <p>Observation 14. The City of Hampton had not inspected industrial and commercial facilities for stormwater purposes.</p> <p>Observation 15. The City of Hampton had not developed an inventory of facilities determined to be contributing substantial pollutant loadings to the MS4.</p> <p>Observation 16. The City of Hampton did not conduct analytical monitoring of industrial or commercial facilities.</p>
I.A.1.d – Runoff from Construction Sites	<p>Observation 17. The City of Hampton E&S inspector had not completed all bi-weekly inspections and post-rain event inspections.</p> <p>Observation 18. The City of Hampton E&S inspector did not enforce proper construction E&S controls at the Liberty Baptist Church construction site.</p> <p>Observation 19. The City of Hampton was not educating construction site operators that E&S plans should be modified as needed to reduce pollutants in stormwater runoff from construction sites.</p> <p>Observation 20. The City of Hampton did not have all E&S inspection records documenting routine inspections for all active construction sites.</p>

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I. INTRODUCTION

From March 31 through April 1, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, (hereafter, collectively, EPA inspection team) inspected the municipal separate storm sewer system (MS4) program of the City of Hampton, Virginia (hereafter, the City, Hampton or the City of Hampton). Discharges from the City's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088633, effective March 8, 2001. The purpose of this inspection was to evaluate compliance with the City's VPDES Permit Number VA0088633 (hereafter, the permit), which is included in Attachment 1. The following personnel participated in this inspection:

Hampton Department of Public Works ¹ :	Mr. Chuck Fleming, Storm Water Manager Mr. Mike Hodges, Engineering Manager Mr. John Miller, Entomology Division, Pest Control Technician Mr. Tim DuBois, Entomology Division, Biologist Mr. Jack M. Elberfeld, Environmental Services Coordinator Mr. Jason Mitchell, Wastewater Operations Division, Wastewater Operations Manager
Hampton Department of Land Development Services:	Ms. Diana Arnette, Site Development Coordinator Ms. Gayle Hicks, Site Plan Review Committee Chairman
Hampton Fire and Rescue Prevention Section:	Mr. Maurice Wilson, Fire Marshal Mr. Jonathan Tatlock, Hazardous Materials Inspector/Environmental Crimes Investigator
Hampton Department of Codes Compliance:	Mr. Alan Kyker, Senior Stormwater Inspector
Hampton Roads Planning District Commission:	Ms. Jenny Tribo
EPA Representatives:	Mr. Andrew Dinsmore, EPA Region 3, Stormwater Team Leader Mr. Ramon Albizu, EPA Region 3
Virginia DCR Representative:	Mr. Doug Fritz, MS4 Program Manager Mr. Lee Hill, Assistant Director, Stormwater Management Programs Mr. Dave Kearney, Stormwater Enforcement
EPA Contractors:	Ms. Lisa Biddle, ERG Ms. Kavya Kasturi, ERG Mr. Scott Coulson, PG Environmental, LLC

The inspection focused specifically on the following sections of the Permit in relation to the City's MS4 program: (1) Part I.A.1.a Structural and Source Control Measures; (2) Part I.A.1.b Unauthorized

¹ A copy of sign-sheets containing the names of all City participants in the inspection is included as Attachment 2.

Discharges and Improper Disposal; (3) Part I.A.1.c Runoff from Industrial and Commercial Facilities; and (4) Part I.A.1.d Runoff from Construction Sites.

Section II of this report presents background information on Hampton's MS4 program. Section III presents information obtained during the inspection related to the specific permit requirements evaluated.

II. HAMPTON BACKGROUND

The City of Hampton is located in eastern Virginia and is bordered by the City of Poquoson, York County, the City of Newport News, the James River, and the Chesapeake Bay. As of 2008, the City's population was approximately 145,000. According to the U.S. Census Bureau, the City has a total area of 51 square miles.

Hampton's MS4 program is administered by the following departments:

- Public Works Department;
- Fire Department;
- Codes Compliance;
- Planning Department;
- Parks Department;
- Hampton Clean City Commission;
- Fleet Maintenance Department; and
- 311 Call Center.

During the inspection, City personnel provided organizational charts for the Storm Water Management Program (Attachment 3).

III. INFORMATION OBTAINED DURING THE INSPECTION REGARDING PERMIT REQUIREMENTS

The EPA inspection team obtained information to evaluate the City of Hampton's compliance with the requirements of the Permit, under which the City's MS4 system is covered. The Permit, included in Attachment 1, has an effective date of 8 March 2001 and an expiration date of 8 March 2006. The EPA inspection team evaluated four permit components; observations regarding the City's implementation of each permit component are presented in the following four subsections. Attachment 4, the Exhibit Log, contains all referenced exhibits, and Attachment 5, the Photograph Log, contains all referenced photographs (additional photographs are available in the inspection record).

III.A. Requirement I.A.1.a – Structural and Source Control Measures

Part I.A.1.a of the Permit addresses requirements for the structural and source controls program. Within this program area, the inspection was focused on site plan review, maintenance inspections, and enforcement. Hampton's Stormwater Management program is implemented by the Department of Public Works; the EPA inspection team's observations related to this section of the permit are discussed below.

III.A.1. Site Plan Review

Part I.A.1.a.(2) of the permit states that Hampton must "adhere to...all those components of the Storm Water Management Master Plan...pertaining to development and redevelopment." Hampton's Storm Water Management Master Plan is entitled the "Municipal Separate Storm Sewer System (MS4) Program Plan" (hereafter, the MS4 Program Plan). Section 7.2 of the MS4 Program Plan provides the requirements for design and plan review.

For each proposed commercial or industrial project, the applicant is required to complete a “Preliminary Site Plan Submission” packet (Exhibit 1, Preliminary Site Plan Submission Packet) which includes general information, a site plan checklist, a stormwater design checklist, the State of Virginia’s Erosion and Sediment Control Regulations Minimum Standard 19 (MS-19) checklist, standard and erosion and sediment control (E&S) notes, nutrient management information, a general best management practice (BMP) maintenance agreement, and the Declaration of Covenants. The site plan checklist was developed by the City Site Plan Review Committee Chairman with the input of each department reviewing the plan. The Declaration of Covenants, administered by the City Attorney’s Office, is a standard legal maintenance agreement for BMPs which requires the BMP owner to maintain the BMP. The Declaration of Covenants also allows City staff to enter the site to inspect the BMP for maintenance needs, and, if maintenance has been neglected, the agreement allows the City take necessary actions to maintain the BMP at the expense of the BMP owner. In addition to the packet, the applicant is required to submit twelve copies of the preliminary site plan, two copies of the stormwater management plan, and one copy of the sanitary sewer application.

Upon receipt of a completed “Preliminary Site Plan Submission” packet, the site plan review committee chairman disseminates the copies of the site and stormwater management plans to the review committee, consisting of approximately 15 reviewers, including staff from Public Works, Fire, Police, Health, Codes Compliance, Planning, and Economic Development. For commercial and industrial projects, all plans received by Tuesday of the current week are reviewed by Wednesday of the following week. The City Site Plan Review Committee Chairman estimates that approximately one plan was received per week in 2009. Every Wednesday at 2pm the site plan review committee holds a review meeting which the design professional and property owner are encouraged to attend. Within two days after the meeting, the City Site Plan Review Committee Chairman creates a letter to the applicant which includes comments from all reviewers. Comments are made on the checklists where there are problems.

A different packet is available for residential subdivisions. Eight copies of the site plan are required and they are reviewed only by Codes Compliance and Planning. The review process for residential subdivisions takes 30 days. A review meeting is held during the third week of review.

Observation 1. The City of Hampton did not have a written SOP for stormwater site plan review, nor was a review checklist documented for each project.

The City of Hampton requires that applicants complete detailed stormwater design and site plan review checklists; however, there is no documentation showing that the City’s reviewer for stormwater management design and construction E&S control confirmed that the applicant completed and/or provided all items in the checklist and that all items were satisfactory. The EPA inspection team formally requested the review checklist via teleconference. The City’s reviewer for stormwater management design and E&S control indicated that her familiarity with the checklists is sufficient for completing her review. Hampton’s lack of documentation for the design review process is inconsistent with the MS4 Program Plan, which states that records of site plan reviews are maintained on file (Exhibit 2, Section 7.2 MS4 Program Plan). Part I.A.1.a.2 of the permit states that Hampton must “comply with all sections of the master plan as related to new development/redevelopment.”

III.A.2. Structural Controls Maintenance Inspections

Once BMPs are entered into the City of Hampton’s Permit Administration and Reporting System (PARS) database, they are placed into rotation for inspection by the City BMP inspectors. Entry into the database is triggered by the completion of construction for public BMPs or the signature of the Declaration of Covenants for private BMPs. Section 7.3 of the MS4 Program Plan details the requirements for BMP maintenance inspections and compliance.

The City of Hampton has four BMP maintenance inspectors who work in two teams to annually inspect the 179 BMPs contained within the City limits. The inspectors, who belong to the Entomology division, are primarily responsible for mosquito control and conduct BMP inspections during December through May, which is their off-season. The inspectors have two laptops which they use in the field to enter BMP inspection data directly into the PARS database. Since the City began using the PARS database within the last year, not all BMPs have been transitioned from the City's master BMP list to the PARS database. However, the inspectors update the database after completing inspections at each BMP. Therefore it is expected that all BMPs will be contained within the database after this year's annual inspections.

The PARS database was developed by the Hampton Roads Planning District Commission (HRPDC) and their contractor support. The database contains inspection checklists which vary based on BMP type. The checklists are based upon the Virginia Stormwater Management Handbook. Section 7.3.3 of the MS4 Program Plan indicates that the City of Hampton maintains the database to provide a mechanism for tracking stormwater BMPs.

Two of the four inspectors have attended multiple trainings conducted by HRPDC. The City recently sent one inspector to North Carolina's certification program for BMP inspectors; City staff indicated that they are working with HRPDC to bring that training to the region.

If the City BMP maintenance inspectors find problems during the inspections, the problems are noted in the PARS database for later follow up by the City Storm Water Manager. The City Storm Water Manager will check the database, notify the BMP owner that there is a problem, and provide the owner a timeframe within which the problem needs to be resolved, typically 30 days. After the timeframe has passed, the City Storm Water Manager will follow up with the BMP owner. The City Storm Water Manager documents the notification and follow-up in a memo to the file.

Observation 2. The City of Hampton BMP maintenance inspectors were unable to thoroughly inspect BMPs.

Part I.B.6 of the permit requires that Hampton "provide adequate finances, staff, equipment and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A of this permit." However, the City BMP maintenance inspectors are unable to thoroughly inspect BMPs. Inspectors indicated that in addition to BMP inspections, they were responsible for mosquito control, maintaining city-owned BMPs (including BMPs at public schools), inspecting illicit discharges, removing trees, and clearing storm drains during rain events. The BMP database indicated that one inspector completed 92 BMP maintenance inspections on March 5, 2010 alone. When the EPA inspection team revisited one of these BMPs with the inspector on April 1, 2010, the inspector first noted that the pond was in good condition and would be marked as satisfactory in the inspection report. However, after spending additional time at the site with the EPA inspection team, he observed several maintenance and repair needs which had not been noted in the March 5, 2010 inspection report. Photographs 1 through 18 in Attachment 5, the Photograph Log, provide several examples of BMP maintenance needs that were identified during the site visit.

The lack of adequate staff and resources to implement the structural controls inspections is an un-resolved issue that was previously identified in an audit conducted in June 2005 by Science Applications International Corporation (SAIC) at the request of EPA, (hereafter, the June 2005 MS4 audit).

Observation 3. The City of Hampton BMP maintenance inspectors did not notify property owners of BMP maintenance or repair needs immediately after each inspection.

City BMP maintenance inspectors note the condition of the BMP in the inspection report stored in the PARS database. The Stormwater Manager reviews the database and notifies the property owner; however,

in some cases three or four weeks elapsed between the initial inspection and notification of the owner. Exhibit 3, 2009 BMP Inspection Follow Up, contains the BMP inspection reports from 2009 which indicated follow up was needed as well as the City Storm Water Manager's documentation of follow up. Part I.A.1.a of the permit requires Hampton use structural and source control measures to reduce pollutants to the MS4 from commercial and residential areas; however, the delay between BMP inspections and follow-up with the owner regarding maintenance needs, may result in discharges to the MS4 which have not received the intended level of treatment from the site's BMP(s).

Observation 4. The City of Hampton's BMP maintenance inspection records did not provide detailed descriptions of unsatisfactory conditions and subsequent corrective activities.

Between 4/17/2009 and 3/5/2010, only four (of 179) BMPs were marked for follow-up action. For the majority of fields marked unsatisfactory in the inspection reports, no further description of the problem was provided in the "Comments" section. Refer to Exhibit 3, Inspection Follow Up, for the BMP inspection reports. Re-inspection documentation was provided for three of the four sites (Exhibit 3, Inspection Follow Up); however, only one of the re-inspections was documented in the database. Part I.C.2.b of the permit requires that Hampton track and report (in the annual report) all inspection and maintenance activities. The PARS database serves as the record for the inspection and maintenance activities described in the *City of Hampton Annual Report Fiscal Year 2009* (hereafter, the 2009 Annual Report), therefore, the re-inspection activities not tracked in the database were not reported (Exhibit 4, 2009 Annual Report – BMP).

Observation 5. The City of Hampton did not have a comprehensive procedure or manual for conducting BMP maintenance inspections.

Two of the BMP inspectors have attended training sessions for conducting BMP inspections. A copy of the training session from October 2007 titled "Inspecting Stormwater Management Facilities Workshop" was provided to the EPA inspection team. The training addresses many of the items in the PARS database inspection checklist; however it did not address how to inspect smaller-scale BMPs, such as infiltration trenches, grassed swales, or bioretention cells. Part I.A.1.a of the permit requires Hampton to use structural and source control measures to reduce pollutants to the MS4 from commercial and residential areas. Lack of inspector training for inspecting all types of BMPs limits Hampton's ability to ensure all BMPs are reducing pollution to the MS4 system.

III.A.3. Structural Controls Site Visits

On April 1, 2010, the inspection team witnessed a BMP maintenance inspection performed by the City of Hampton; this is described below.

All referenced photographs are contained in Attachment 5, Photograph Log. During the site visit, the inspection team also visited the active construction area located on site.

Site: Liberty Baptist Church

Liberty Baptist Church, located at 1021 Big Bethel Ave, is a 54.5 acre site containing one building, parking lots, and three active wet ponds. Two of the ponds are located on the east side of the property and one is located on the west side. All three ponds are connected by concrete swales. At the time of EPA's site visit, a new sanctuary, youth center building and additional parking spaces were under construction. Additionally, a fourth wet pond was being installed.

Upon arrival at the east side of the site, the EPA inspection team noted that two ponds were present even though only one pond was listed in the City database. The City BMP maintenance inspectors indicated that typically, the forebay, inlets, outlets, and principal spillways are checked for problems and the pond examined for erosion, woody vegetation, and trash. The site visit began by inspecting the inlets and banks of one pond, as well as the concrete swale feeding the pond. The City BMP maintenance inspectors and the EPA inspection team then proceeded to inspect the inlets and banks of the second pond, which was located adjacent to the construction area. The EPA inspection team continued around the construction site and located a third pond of which the City inspectors were unaware.

The EPA inspection team noted the following at the ponds:

- Standing water in the inlets and the concrete swale feeding the first pond (Photographs 1 and 2). The City BMP maintenance inspectors stated that the standing water in the inlets was due to the pond being full and the water in the concrete swale was due to recent rainfall. Rainfall had last occurred over 48 hours before the site visit. The inspectors indicated the standing water was not a problem and the swale would be dry by June.
- Significant leaf debris near a third inlet to the first pond (Photograph 3). The inspectors indicated debris would not be noted unless the inlet was completely blocked.
- Muskrat holes along the banks of both ponds (Photograph 4). The inspectors stated that the holes were not considered a problem. The holes may be noted; however, the location would not typically be noted. Upon reviewing the inspection report completed by the City BMP maintenance inspectors, the City Storm Water Manager may instruct the property owner to backfill the holes.
- Erosion of the bank of the second pond. Straw was placed on the eroded area to aid reseeding (Photograph 5). Additionally, a torn silt fence was located at the top of the eroded bank (Photograph 6) and the pond water appeared to be turbid.
- A torn dewatering bag on the banks of the second pond and a dewatering bag filled with sediment located on another area of the embankment (Photographs 7 through 9).
- Excessive algae and woody vegetation and the third pond, located on the west side of the site (Photographs 10 through 12).
- Inadequate protection between the construction area and the third pond. The silt fencing was not complete and failing in areas (Photographs 13 through 15). Sediment was present in the pond. Additionally, a mud wall was located within the pond forming a barrier or small basin between the third pond and the new pond that was under construction (Photographs 16 and 17), however the barrier appeared to be too low as the water it held back nearly reached its top (Photograph 17). Sediment and debris were also present in a dry channel leading from the construction area to the pond (Photograph 18).

Observation 6. The City of Hampton BMP maintenance inspectors did not demonstrate a thorough understanding of the BMP maintenance inspection procedures needed to ensure pollutants discharged to the MS4 system are reduced.

Part I.A.1.a of the permit requires Hampton to have a “program to utilize structural and source control measures to reduce pollutants that are discharged through the municipal separate storm sewer system in stormwater runoff from commercial and residential areas.” The inspection record in the database for Liberty Baptist Church on March 5, 2010 (Exhibit 5, Inspection Database Record) indicated that there

were no problems at the site. During an inspection on April 1, 2010, conducted with the EPA inspection team, the inspector initially indicated that the ponds were in good condition. However, after discussion with the EPA inspection team, the inspector noted the following problems on the April 1 inspection report (Exhibit 6, Inspection Report): embankment erosion, erosion and sediment near an inlet, improper safety devices, and settling near structural components near the new development. Additionally, the inspector did not consider animal burrows and standing water in the concrete swale draining to the pond to be problems and did not note them in the inspection report even though the inspection report template instructed inspectors to note these issues. The EPA inspection team also noticed missing ground cover near the BMP which was not noted in the inspection report.

Additionally, the City of Hampton did not have a procedure in place for City BMP maintenance inspectors to convey problems associated with construction sites to the E&S inspector. While performing a BMP inspection at the Liberty Baptist Church site, which contained both existing BMPs and new development, the City BMP maintenance inspectors observed a lack of inlet protection and lack of silt fence. However, one inspector indicated that he would not typically note this in the inspection report or convey these concerns to the City E&S inspector.

Observation 7. The BMP tracking portion of the City of Hampton's Permit Administration and Reporting System (PARS) database was incomplete.

Permit Part I.C.2.b requires the permittee to track and report the number and types of BMPs, the acres served by the BMPs, and the inspection and maintenance activities. Of the three ponds at the Liberty Baptist Church site, only one was in the database. The inspector was only aware of two of the three ponds. During an inspection of the Liberty Baptist Church site with the EPA inspection team, the inspector indicated that if he inspects a BMP that is not in the database, he would complete a paper inspection sheet and add the BMP to the database upon his return to the office. However, the City BMP maintenance inspector did not have a paper inspection sheet with him. Also, the database and the inspector indicated that the site had been inspected on March 5, 2010; however, at the time of the EPA inspection the second pond had not been added to the database.

Observation 8. The City of Hampton BMP maintenance inspectors did not verify pond storage capacity during inspections (e.g., sediment accumulation).

City BMP maintenance inspectors did not evaluate the storage capacity of the pond. The inspectors indicated that a raised water level, water on the grass or concrete near the emergency spillway, or sediment reaching the level of the outfall would be a flag that the storage capacity would need to be checked. However, the inspectors did not have pictures indicating the water level or take any new pictures during the April 1, 2010 inspection to record the water level. The inspectors indicated that the installation of a pre-marked pole in the pond would aid capacity checks.

III.A.4. Application of Herbicides

On March 31 and April 1, 2010, the inspection team witnessed the application of herbicides near City Hall at 22 Lincoln Street. Application of herbicides on pavement in and surrounding stormwater inlet structures provided an opportunity for the herbicides to enter the City's MS4. Refer to Photographs 19 through 21 in Attachment 5, the Photograph Log.

Observation 9. The City of Hampton did not protect the MS4 system from the application of herbicides.

Permit Part I.A.1.(a)(5) requires that Hampton have a program to reduce the pollutants in discharges to the MS4 associated with the application of pesticides, herbicides, and fertilizer. The permit also requires

that Hampton have a public relations plan designed to educate the public about stormwater pollution prevention associated with the application of herbicides, pesticides, and fertilizers. However, the EPA inspection team observed the application of herbicides to the brick sidewalks around City Hall at 22 Lincoln Street in close proximity to several storm drain drop inlets which are components of the City's MS4. The application was not selective and covered the entire brick sidewalk surface. A City Parks and Recreation Department staff member explained that the herbicides consisted of a mixture of Roundup and a pre-emergent. The mixture also contained marking chalk that turned the sidewalks yellow so that staff could see where the mixture had been applied. Upon questioning, the City Parks and Recreation Department staff member indicated that the marking chalk colorants and herbicides would wash away during the next rain event. It was not determined whether the City Parks and Recreation Department staff member had received training on illicit discharges or chemical application techniques that would reduce pollutants in discharges to the MS4.

III.B. Requirement I.A.1.b – Unauthorized Discharges and Improper Disposal

Part I.A.1.b of the Permit contains requirements for unauthorized non-stormwater discharges and improper disposal, which the City addresses through a program referred to as its illicit discharge detection and elimination (IDDE) program. The City IDDE program components and applicable permit requirements related to this section of the permit are discussed below.

III.B.1. Dry Weather Field Screening

The City Department of Public Works Entomology Division staff conduct dry weather screening of approximately 30 sites on an annual basis. The selection of dry weather screening sites is based on land use categories and the selected sites are concentrated in the City's commercial, industrial, and residential areas. The City has developed a standard operating procedure for dry weather screening entitled, *City of Hampton Field Screening Plan and Procedures Manual*, dated March 24, 2008 (hereafter, City Field Screening Procedures Manual). Investigations of potential illicit discharges, including those identified through dry weather screening, are conducted by the City Storm Water Manager.

III.B.2. Public Reporting of Illicit Discharges

In addition to dry weather screening, investigations of potential illicit discharges can also be generated from citizen complaints. The City has developed an Internet-based reporting mechanism for all types of citizen complaints, but it can also receive complaint calls to the City's 3-1-1 call center. In addition to its function for BMP maintenance inspection tracking (as discussed in Section A of this report), the City is in the process of transitioning its IDDE program tracking to PARS. The PARS system is currently populated with illicit discharge complaint data which dates back to September 2009. The City expects that the PARS system will facilitate the management of illicit discharge case files and annual reporting.

III.B.3. Spill Prevention, Containment and Response

The City uses its Fire Department for spill cleanup activities which are not sewage related. In contrast, sewage spills and sanitary sewer overflows (SSOs) are managed by the City Department of Public Works Wastewater Operations Division. The City Wastewater Operations Manager explained that approximately half of all SSOs are caused by tree root blockages, and the other half are caused by grease blockages. A summary of SSOs is provided to the City Storm Water Manager for inclusion in the City's Annual Report to DCR.

III.B.4. Management and Disposal of Oil, Toxics, and Other Household Hazardous Wastes

The City is a member community of the Virginia Peninsulas Public Service Authority (VPPSA) which manages Household Hazardous Waste (HHW) collection events throughout its service area. In 2010, VPPSA plans to hold five HHW collection events in different geographic regions of the City, with approximately 15 total available HHW collection events for City residents within the VPPSA member community service area.

Observation 10. The City of Hampton did not revise the language of the City’s Stormwater Management Ordinance.

Special Condition B.4 of the Permit requires the City to effectively prohibit non-stormwater discharges (i.e., materials other than stormwater) into the MS4 unless it is determined that the non-stormwater discharge is conditionally exempt as specified in Special Condition B.4.b of the Permit. Pursuant to this requirement, Section 33.1-12.2(b) of the City’s Stormwater Management Ordinance (Exhibit 7, Stormwater Ordinance) states “no person, either directly or indirectly, shall cause or permit any *significant* discharge to the city’s storm sewer system that is not composed entirely of stormwater [emphasis added].” The use of the word “significant” in the definition of non-stormwater discharge, which is included in the City’s Stormwater Management Ordinance, is not consistent with the broad and inclusive definition provided in Special Condition B.4 of the Permit, and therefore does not provide clear direction on what constitutes a prohibited non-stormwater discharge. This is an un-resolved issue that was previously identified in the June 2005 MS4 audit).

Furthermore, City staff including Hampton City Public Schools employees, a City police officer, and a City Parks and Recreation Department worker (see Observation 9 above for additional details) did not display a strong awareness of what qualifies as a prohibited non-stormwater discharge. The EPA inspection team observed an illicit non-stormwater discharge into the MS4 during a site visit to the City Fleet Services Center located at 413 N. Armistead Avenue. Despite the availability of a Department of Public Works wash rack at the City Fleet Services Center (Photographs 22 and 23), a City police officer was actively conducting vehicle washing at a location that was not equipped for the capture, treatment, re-use, or disposal of vehicle wash water and associated pollutants (Photograph 24). A bucket of soapy wash water labeled “school bus,” a container of windshield washer fluid, and a hose bib were present in the washing area (Photographs 25 through 27). Due to the washing activity, soapy wash water and associated pollutants were observed flowing from the washing area (Photograph 27), and entering an on-site storm drain drop inlet (Photographs 28 and 29). Hampton City Public Schools staff present at the adjacent shop explained that this area is also used for washing school buses.

Observation 11. The City of Hampton did not conduct investigation and follow-up to a dry weather field screening trigger at 106 Garrett Drive.

Part I.A.1.b(2) of the Permit requires the City to “continue the implementation of the current field screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm sewer system.” In response to the June 2005 MS4 audit, the City revised its *Procedures for Field Screening and On-Site Investigations for Illicit Discharges*, which were included as Appendix 4B in the City’s Part II NPDES permit application. The City is currently operating under Appendix C, Section 5.2.2 of the MS4 Program Plan, the City Field Screening Procedures Manual.

The EPA inspection team observed that field screening had not been conducted in accordance with the City Field Screening Procedures Manual. Section C of the City Field Screening Procedures Manual explains that the City uses a hand-held pH meter and a Chemetrics kit to analyze samples for chlorine, copper, phenol, detergents, pH, and temperature. Section F of the City Field Screening Procedures Manual states “if testing results in any values that are cause for concern, a retest of that constituent will be

conducted immediately....The specified ranges for the measured parameters, which are cause for concern, are listed below [in the City Field Screening Procedures Manual]” (Exhibit 8, Section F Field Screening Manual). However, the City Field Screening Procedures Manual does not include a “cause for concern” threshold value for pH. The City Storm Water Manager explained that the City considers a pH value less than or equal to 5.0 standard units (s.u.) as its “cause for concern” threshold, and referred to the guidance manual entitled, *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments* (EPA Publication No. 833-B-04-005), as the source information for this pH value (Exhibit 9, EPA IDDE Manual). Table 45 in this manual notes that “high pH values may also indicate an industrial discharge but residential wash waters can have a high pH as well [e.g., concrete wash water],” suggesting that the benchmark pH value of less than or equal to 5.0 s.u. is not fully protective.

Field measurements taken for an observed dry weather flow at 106 Garrett Drive on March 11, 2009 were outside the acceptable range, and hence indicated a “cause for concern” for pH. Section C.2 of the City Field Screening Procedures Manual states “if flow is observed there is strong indication that an illicit connection to the stormwater system is present and the City will most likely follow up to identify and correct.” The City conducted dry weather screening at 106 Garrett Drive at 8:15 a.m. on March 11, 2009; flow was observed and a pH value of 5.1 s.u. was recorded using a hand-held pH meter (Exhibit 10, Garrett Field Sheets). After conducting dry weather screening at additional sites, City staff returned to 106 Garrett Drive at 2:00 p.m. on March 11, 2009; flow was observed and a pH value of 4.7 s.u. was recorded, which exceeds the “cause for concern” threshold of 5.0 s.u. described by the City Storm Water Manager (Exhibit 10, Garrett Field Sheets). Despite the occurrence of a pH value that indicated the presence of illicit flow, the City’s field sheet for 106 Garrett Drive at 2:00 p.m. on March 11, 2009 shows that a sample was not collected for laboratory analysis (Exhibit 10, Garrett Field Sheets). It should be noted that pH values should be analyzed on-site to obtain accurate and reliable results. In NPDES required sampling, for example, samples must be analyzed for their pH value within 15 minutes of collecting the sample as specified in 40 CFR Part 136, Table II, “Required Containers, Preservation Techniques, and Holding Times.” Therefore, on-site pH measurements that indicate the presence of illicit flow should immediately trigger a follow-up response to identify the source.

Part I.A.1.b(3) of the Permit requires the City to “conduct on-site investigation of potential sources of unauthorized non-storm water discharges.” The EPA inspection team formally requested “reported incidents of illicit discharges/connections/spills and resolution (FY09 to current)” (Item 25 in Exhibit 11, Team 1 Records Request), and “records of major outfall inspections/dry weather field screening and monitoring (FY08 to current)” (Item 28 in Exhibit 11, Team 1 Records Request). However, records were not provided to document that the City conducted on-site investigation of potential sources of unauthorized non-stormwater discharges for the occurrence of a pH value that indicated the presence of illicit flow at 106 Garrett Drive on March 11, 2009, as described above. The 2009 Annual Report, Section III.A, Field Screening and On-site Investigations for Illicit Discharges, states “2 Sites tested, All negative for pollutants.” According to the City’s field sheets, the two sites tested were 106 Garrett Drive and the intersection of Newsome Place and Salters Creek Road. Collectively, the City’s field sheets and 2009 Annual Report indicate that the City considered the low pH value experienced at 106 Garrett Drive as “negative for pollutants.”

Observation 12. The City of Hampton did not have written procedures for illicit discharge tracking, source identification, elimination, or enforcement.

Part I.A.1.b(3) of the Permit requires the City to “conduct on-site investigation of potential sources of unauthorized non-storm water discharges. The permittee shall act as expeditiously as possible to require a discharger to eliminate unauthorized non-storm water discharges....The permittee shall require immediate cessation of improper disposal practices upon identification of responsible parties.”

Subsequent to the MS4 inspection, the EPA inspection team reviewed the City's case files containing complaints of unauthorized non-stormwater discharges and follow-up responses contained in the PARS database for the months of September 2009 through December 2009. Based on the data maintained in PARS, it could not be determined when the City first responded to these complaints. Although the complaint date and time are recorded in PARS, the date and time of the first response is not clearly documented. Rather, the City records the date and time that the PARS entry was last updated. Complaint Nos. 2010-8 and 2010-20 are provided in Attachment 3, Exhibit 12, Complaint Nos. 2010 to demonstrate the documentation of complaints in PARS.

Furthermore, the City has not yet developed written procedures for illicit discharge tracking, source identification, or elimination (Exhibit 13, Section 5.2 MS4 Program Plan). The City Storm Water Manager explained that he is typically the first responder to complaints of illicit discharges, but indicated that he does not have the authority to issue enforcement of the City's Stormwater Management Ordinance, or City code in general. This issue was previously identified in the June 2005 MS4 audit. The City Storm Water Manager further explained that the City would have to bring forth a civil suit for enforcement, but he had not personally initiated civil enforcement during his tenure with the MS4 program (i.e., since 2003). Furthermore, the City Storm Water Manager stated that the City does not have an enforcement response plan or guide, and enforcement is handled on a case-by-case basis for stormwater issues.

The EPA inspection team formally requested an "example/case file of an illicit discharge incident where enforcement was used" (Item 27 in Exhibit 11, Team 1 Records Request). However, the City did not produce an enforcement example that was conducted for stormwater purposes. The City Storm Water Manager explained that he could not recall an occasion where enforcement was needed during his tenure with the MS4 program (i.e., since 2003). Based on this body of evidence, the City had not initiated written enforcement for stormwater purposes.

III.C. Requirement I.A.1.c – Runoff from Industrial and Commercial Facilities

Part I.A.1.c of the Permit contains requirements to monitor and control pollutants in stormwater discharges from certain industrial and commercial facilities, which the City addresses through a program referred to as its Industrial Facilities Program. The staff responsible for the City's Industrial Facilities Program include the City Storm Water Manager and representatives of the City Fire and Rescue Prevention Section. The City relies on the City Fire and Rescue Prevention Section to inspect industrial and commercial businesses under authority granted by the 2006 Virginia Statewide Fire Prevention Code. The EPA inspection team was provided with the City Fire and Rescue Prevention Section's *Hazmat Listing* which contains 220 facilities, and a *Hampton Tier Two Emergency and Hazardous Chemical Inventory*, dated 2008, which contains an additional 64 facilities that are subject to hazardous materials inspections.

Observation 13. Aside from the Virginia Statewide Fire Prevention Code, the City of Hampton had not established legal authority to inspect private industrial and commercial businesses for stormwater purposes.

Part I.A.1.c(1) of the Permit requires the City to "inspect any new or previously unidentified facilities" of the types and categories specified in Part I.A.1.c of the Permit. Special Condition B.5 of the Permit further requires the City to "operate pursuant to the established legal authority described in 40 CFR [Part] 122.26 (d)(2)(i), or shall obtain the legal authority necessary to control discharges to and from those portions of the municipal separate storm sewer system over which it has jurisdiction." 40 CFR Part 122.26 (d)(2)(i) states "Part 2 of the [NPDES] application shall consist of a demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant [City] at a minimum to: (A) control through ordinance, permit,

contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with *industrial activity* and the quality of storm water discharged from sites of *industrial activity*; and....(F) carry out all *inspection, surveillance and monitoring procedures* necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer [emphasis added].” The EPA inspection team did not review the City’s Part II NPDES permit application, but instead focused on the City’s current regulatory mechanisms pertaining to stormwater. According to the *City of Hampton Department of Public Works Industrial Inspection Policy Manual* (hereafter, City Industrial Inspection Manual) contained in Appendix C, Section 5.4.1 of the MS4 Program Plan, the City believes that Part I.A.1.c of the Permit [the City’s MS4 permit] grants the City authority to inspect private industrial and commercial businesses for stormwater purposes (Exhibit 14, City Industrial Inspection Manual). However, the Permit only provides inspection and entry authority to EPA, DCR, and their authorized representatives, and does not grant this authority to the City.

The City relies on the City Fire and Rescue Prevention Section to inspect industrial and commercial businesses under authority granted by the 2006 Virginia Statewide Fire Prevention Code (see Observation 14 below for additional details). Once DCR issues the City a new MS4 permit, the City intends to improve its Industrial Facilities Program and fully implement the City Industrial Inspection Manual by having its Department of Public Works staff conduct industrial inspections.

Traditional (city and county) MS4s that possess land use authority typically carry out all inspection, surveillance, and monitoring of sites with industrial activity by establishing legal authority in ordinances pertaining to stormwater. In contrast, the City of Hampton’s Stormwater Management Ordinance does not contain a section that establishes legal authority to inspect private industrial and commercial businesses for stormwater purposes.

III.C.1. Industrial Facility Site Visits

On March 31, 2010, the EPA inspection team witnessed a series of industrial business inspections performed by the City Fire and Rescue Prevention Section’s Hazardous Materials Inspector/Environmental Crimes Investigator (hereafter, City Environmental Crimes Investigator). Summary observations pertaining to select sites are presented below. The purpose of observing the City Environmental Crimes Investigator conduct inspections was to assist the EPA inspection team in assessing the City’s industrial business inspection process. All referenced photographs are contained in Attachment 5, Photograph Log.

Site: Public Scrap, Inc. – 2050 West Pembroke Avenue, Hampton, VA

This facility (Photograph 30) is categorized under Standard Industrial Classification (SIC) code 5093, Scrap and Waste Materials, and the owner or operator had obtained coverage (Registration No. VAR051235) under 9VAC25-151, *General VPDES Permit for Discharges of Storm Water Associated with Industrial Activity*, adopted April 27, 2009 (hereafter, Industrial General Permit).

The EPA inspection team viewed the “outfall 001” designated stormwater sample collection point located along a drainage ditch west of the “white goods” (e.g., household appliances) area at the facility. The facility discharges stormwater through outfall 001 along the drainage ditch which generally flows northwest. According to the City’s storm drain system map maintained by the Public Works Operations GIS Division, the drainage ditch conveys flows offsite, and the extension of the drainage ditch is a component of the City’s MS4. The City’s storm drain system map also showed an on-site storm drain pipe segment that was not present on the facility Storm Water Pollution Prevention Plan (SWPPP) site map, indicating that the facility operator was not aware of the need to protect this storm drain pipe segment.

Multiple stormwater-specific deficiencies were observed by the EPA inspection team that were not identified by the City Environmental Crimes Investigator, were not documented in his inspection report (Exhibit 15, City inspection record for Public Scrap), and were not verbally conveyed to the facility operator during the City's on-site closing meeting. These deficiencies included the following:

- Uncovered batteries and metals were stored in direct contact with the ground surface, near an area of vehicular traffic (Photograph 31).
- Crushed vehicles and exposed metals were stored in standing water and a green fluid, likely anti-freeze, had commingled with the standing water (Photographs 32 and 33). This indicated that vehicle fluids had not been removed prior to crushing.
- Although stored under overhead coverage, the secondary containment for the petroleum storage tanks was structurally compromised. Specifically, the concrete was severed into parts (Photographs 34 and 35).
- BMPs were not implemented to prevent prolonged stormwater contact with metal materials in the northern portion of the facility. Specifically, corroding metal materials were stored in a depressed area where standing water was present (Photograph 36).

Additional deficiencies observed by the EPA inspection team were also identified by the City Environmental Crimes Investigator. These deficiencies included the following:

- An oil sheen was present on the standing water under the vehicle crusher and residues were observed beyond the concrete containment berm (Photographs 37 and 38). This issue was generally identified and documented in the City's inspection report (Item 1 in Exhibit 15, City inspection record for Public Scrap).
- Metal rims and tires were stored in standing water and a brown fluid had commingled with the standing water (Photograph 39). The facility operator indicated that the brown fluid was likely calcium or magnesium chloride, a liquid wheel ballast material that is added to equipment tires to provide weight. This issue was verbally conveyed to the facility operator during the City's on-site closing meeting.

Furthermore, the issues identified in the City Environmental Crimes Investigator's inspection report emphasize fire prevention and hazardous materials. Out of a total of eight issues in the inspection report, five of the issues pertain to fire prevention and hazardous materials deficiencies with no direct relevance to stormwater, including: Items 4, 5, 6, 7, and 8 (Exhibit 15, City inspection record for Public Scrap). However, because the inspection was also intended to be a stormwater inspection, it should also emphasize outdoor activities which have the potential for stormwater exposure and the subsequent discharge of pollutants offsite.

Site: Highway Motors of Hampton, VA, Inc. – 2951 North Armistead Avenue, Hampton, VA

This facility (Photograph 40) is categorized under SIC code 5015, Motor Vehicle Parts, Used, and the owner or operator had obtained coverage (Registration No. VAR050240) under the Industrial General Permit.

Two stormwater-specific deficiencies were observed by the EPA inspection team that were not identified by the City Environmental Crimes Investigator. The deficiencies were not documented in his inspection report (Exhibit 16, City inspection record for Highway Motors), and were not verbally conveyed to the facility operator during the City's on-site closing meeting. These deficiencies were:

- In the western and southwestern portions of the facility, loose batteries were stored uncovered, in direct contact with the ground surface, and near standing water (Photographs 41 through 43).
- In the western portion of the facility, vehicles were stored with dismantled parts exposed to stormwater contact near an area of standing water (Photographs 44 through 46).

The City Environmental Crimes Investigator indicated that he did not know what pollution prevention practices to look for at auto parts facilities. For example, he was not aware of BMPs such as storing vehicles with the hood down (i.e., overhead coverage for engines and fluid residues), or storing vehicles and metal parts raised off the ground (e.g., on wheels with the tire intact).

Furthermore, the issues identified in the City Hazardous Materials Inspector/Environmental Crimes Investigator's inspection report emphasize fire prevention and hazardous materials at indoor locations. Out of a total of six issues in the inspection report, five of the issues pertain to indoor locations with no direct relevance to stormwater, including: Items 1, 2, 3, 5, and 6 (Exhibit 16, City inspection record for Highway Motors). However, because the inspection was also intended to be a stormwater inspection, it should also emphasize outdoor activities which have the potential for stormwater exposure and the subsequent discharge of pollutants offsite.

Observation 14. The City of Hampton had not inspected industrial and commercial facilities for stormwater purposes.

Part I.A.1.c(1) of the Permit requires the City to “inspect any new or previously unidentified facilities” of the following types and categories: municipal landfills; hazardous waste treatment, storage, and disposal facilities; industrial facilities subject to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA); and facilities determined by the permittee to be contributing substantial pollutant loadings in stormwater discharges.

The City Storm Water Manager explained that the Department of Public Works Entomology Division conducts inspections of post construction BMPs, some of which are located at private industrial and commercial facilities. It was further explained that if the City Entomology Division staff were to observe poor site conditions or illicit discharges at industrial and commercial facilities while onsite for an inspection of post construction BMPs, they would notify the City Storm Water Manager or City Fire and Rescue Prevention Section to initiate follow-up activities. However, upon questioning by the EPA inspection team, both the City Storm Water Manager and the City Environmental Crimes Investigator stated that they had never received a referral from the City Entomology Division staff regarding poor site conditions or illicit discharges at industrial and commercial facilities. Therefore, the referral process had not been utilized.

The City relies on the City Fire and Rescue Prevention Section to inspect industrial and commercial businesses under authority granted by the 2006 Virginia Statewide Fire Prevention Code. The City Fire and Rescue Prevention Section conducts inspections of a host of facility types, including those industrial facilities subject to EPCRA Section 313. However, the City Storm Water Manager stated that stormwater-specific training had not been provided to the City Fire and Rescue Prevention Section. The City Fire and Rescue Prevention Section has one inspector, the City Environmental Crimes Investigator, who is tasked with conducting annual inspections of every hazardous material (hazmat) occupancy and/or operation in the City. The EPA inspection team was provided with the City Fire and Rescue Prevention Section's *Hazmat Listing* which contains two hundred and twenty facilities, and a *Hampton Tier Two Emergency and Hazardous Chemical Inventory*, dated 2008, which contains an additional sixty four facilities that are subject to inspection. Upon questioning, the City Environmental Crimes Investigator stated that the Department of Public Works had not provided him with the directive or training to conduct inspections

for stormwater purposes, and that he had just recently met the City Storm Water Manager in the weeks preceding the MS4 inspection.

The City's hazmat compliance inspections and environmental crimes investigations do not address all potential pollutants that could have an impact on stormwater quality. Specifically, the City Fire and Rescue Prevention Section's *Plan for Hazardous Materials Compliance Inspections and Environmental Crimes Investigations*, Section V, Procedures/Scope of Work, describes the inspection scope and explains that "inspections will be conducted to identify and correct all situations that may cause the release of *hazardous materials* [emphasis added]" (Exhibit 17, Plan for Hazardous Materials Compliance Inspections). As defined in Chapter 27 of the 2000 International Fire Code (referenced by the 2006 Virginia Statewide Fire Prevention Code), hazardous materials are those chemicals or substances which are physical hazards or health hazards (Exhibit 18, Virginia Fire Marshal Academy Training). Physical hazards include the following material categories: explosives and blasting agents, flammable and combustible liquids, flammable solids and gases, organic peroxide materials, oxidizer materials, pyrophoric materials, unstable (reactive) materials, water-reactive solids and liquids, and cryogenic fluids. Health hazards include the following material categories: highly toxic and toxic materials and corrosive materials. Under this definition, the City's inspections do not address non-hazardous pollutants that may degrade water quality, such as sector-specific materials and particulates, nutrients, pesticides, and sediment. Additionally, the definition of hazardous materials is not consistent with the broad and inclusive definition of "pollution" provided in the Virginia State Water Control Law.

To assist in assessing the City's hazmat compliance inspection process, the EPA inspection team observed the City Environmental Crimes Investigator conduct inspections of two facilities located in the jurisdictional boundaries of the City and/or served by the City's MS4: Public Scrap, Inc., and Highway Motors of Hampton, VA, Inc. Both facilities appear on the City Fire and Rescue Prevention Section's *Hazmat Listing*, and the City Environmental Crimes Investigator explained that the scope of inspection is the same for all facilities on the *Hazmat Listing*. The EPA inspection team queried the EPA Toxics Release Inventory (TRI) database to identify facilities that may be within the City's jurisdiction that are subject to EPCRA Section 313. Four of the six facilities identified in TRI are also listed on the City Fire and Rescue Prevention Section's *Hazmat Listing*, and would therefore be inspected by the City in the same manner as Public Scrap, Inc., and Highway Motors of Hampton, VA, Inc.

As evidenced in Industrial Facility Site Visits in Section III.C.1 of this report, stormwater does not have a prominent role in the purpose and scope of the City's hazmat compliance inspections and environmental crimes investigations. For example, the City Environmental Crimes Investigator did not consistently cite the most applicable codes pertaining to stormwater quality in his inspection reports for Public Scrap, Inc., and Highway Motors of Hampton, VA, Inc. Virginia Statewide Fire Prevention Code (SFPC), Section 2703.3 has the most direct applicability to stormwater quality and states "Hazardous Materials in any quantity shall not be released into storm drains, ditches, sewers, drainage canals, creeks, streams, rivers, lakes, tidal waters, or on the ground, sidewalks, streets, highways, or into the atmosphere." The City Fire Marshal and Environmental Crimes Investigator indicated that under state police powers, they could issue citations under any state code. However, the City Environmental Crimes Investigator only cited SFPC Section 2703.3 on one occasion in his two inspection reports (Exhibit 15, City inspection record for Public Scrap). Additionally, the City Environmental Crimes Investigator did not cite the City's Stormwater Management Ordinance in either of his inspection reports, indicating that the ordinance is not actively utilized in the City's hazmat compliance inspections and environmental crimes investigations.

In the 2009 Annual Report, the City does not claim that its hazmat compliance inspections and environmental crimes investigations qualify as inspections conducted for MS4 compliance purposes. Specifically, Section IV.A of the 2009 Annual Report, Inspecting, Establishing and Implementing Control Measures for Priority Industries, refers the reader to Sections III.A and III.B to answer the "number of facilities inspected" performance measure (Exhibit 19, 2009 Annual Report - Industrial). Sections III.A

and III.B of the 2009 Annual Report pertain specifically to the City's IDDE program and not to industrial and commercial business inspections (Exhibit 19, 2009 Annual Report - Industrial). As such, the 2009 Annual Report does not provide an answer to the "number of facilities inspected" performance measure.

The EPA inspection team conducted its own query of the TRI database and determined that there are at least six facilities that are subject to EPCRA Section 313 within the jurisdiction of the City, and therefore must be inspected for stormwater purposes (Exhibit 20, TRI list). In addition, the Bethel Landfill, which handles municipal solid waste, is located at 100 North Park Lane within the City limits. Based on the evidence provided in the preceding paragraphs, at a minimum, the City has not inspected these seven facilities for stormwater purposes. This is an un-resolved issue that was previously identified in the June 2005 MS4 audit that stated "the City has not conducted inspections of any commercial or industrial facilities except for [post construction] BMPs."

Observation 15. The City of Hampton had not developed an inventory of facilities determined to be contributing substantial pollutant loadings to the MS4.

Part I.A.1.c of the Permit requires the City to develop and implement a program to monitor and control pollutants in stormwater discharges from facilities determined by the permittee to be contributing substantial pollutant loadings in stormwater discharges.

The EPA inspection team formally requested an "inventory of other facilities determined by the City to be contributing substantial pollutant loadings" (Item 7 in Exhibit 11, Team 1 Records Request). However, records were not provided to document that the City had inventoried facilities in its jurisdictional boundaries to assess their contribution to pollutant loadings. During the interview session conducted on March 31, 2010, the EPA inspection team specifically questioned the City Storm Water Manager on this records request item. The City Storm Water Manager indicated that aside from facilities that generate, store, or dispose of hazardous materials, additional facility categories (e.g., automobile services, retail gas outlets, food facilities, car washes, etc.) had not been assessed by the City to determine their impact on the MS4. Hazardous material occupancies and/or operations are inventoried on the City Fire and Rescue Prevention Section's *Hazmat Listing* and the *Hampton Tier Two Emergency and Hazardous Chemical Inventory*, dated 2008. Additionally, the City Storm Water Manager indicated that the City had conducted general public education activities regarding stormwater pollution prevention, but the only commercial/industrial type that had been emphasized for outreach was restaurants as part of the "HR FOG" program led by HRPDC. HR FOG is a regional public information campaign to educate the public and restaurant owners of the need to decrease the amounts of fats, oils and grease from entering the sanitary sewer system.

Observation 16. The City of Hampton did not conduct analytical monitoring of industrial or commercial facilities.

Part I.A.1.c(2) of the permit states that the City "may monitor, or require the facility to monitor, stormwater discharges associated with industrial activity" to the MS4 from the following types and categories of facilities: municipal landfills; hazardous waste treatment, storage, and disposal facilities; industrial facilities subject to EPCRA Section 313; and facilities determined by the permittee to be contributing substantial pollutant loadings in stormwater discharges.

The EPA inspection team formally requested "monitoring records for industrial/commercial facilities" (Item 10 in Exhibit 11, Team 1 Records Request), but the City did not produce the requested records. The City Storm Water Manager explained that the City does not conduct monitoring (i.e., sample collection and analytical analysis) of industrial or commercial facilities, nor does it require facility operators to conduct monitoring. This issue was previously identified in the June 2005 MS4 audit. Additionally, the

City does not review discharge monitoring records from facilities in the City's jurisdiction which have Industrial General Permit coverage.

III.D. Requirement I.A.1.d – Runoff from Construction Sites

Part I.A.1.d of the Permit addresses requirements for the structural and source controls program for construction sites. Within this program area, the inspection was focused on the inspections, enforcement and the tracking database. Hampton's Erosion and Sediment Control program (E&S program) is implemented by the Department of Codes Compliance; the inspection team's observations related to this section of the permit are discussed below. Section 6.0 of the MS4 Program Plan details the requirements for construction site runoff control.

III.D.1. Erosion and Sediment Control Inspections

The City of Hampton's Department of Codes Compliance has one inspector responsible for E&S inspections of commercial projects and another inspector for residential projects. The Department of Public Works inspects capital improvement projects. Section 6.3.1 of the MS4 Program Plan discusses the requirements for inspections and enforcement.

Each active construction site is inspected every two weeks and within 48 hours of a runoff-producing storm event (which the City indicated was typically 0.5 inches of rainfall) until construction is substantially complete. After substantial completion, the owner obtains the occupancy permit and E&S inspections are conducted once per month until stabilization is complete. At the time of the EPA inspection, the City had 38 active construction sites. The inspector indicated that it takes 1.5 weeks to inspect all of the sites assuming no rainfall occurs. The inspector does not keep documentation of his inspection schedule. The inspector indicated that he was familiar enough with the program to know which sites to inspect and when to do so.

The inspector carries a hard copy of the E&S plan to the inspections and marks up the plans when there are problems. The inspector may approve changes to the E&S plan during the inspection but does not document the changes or communicate the changes to the City Site Plan Review Coordinator. The site plan reviewer and the inspector indicated that there was no documented procedure for these approvals, nor were there written guidelines as to when to seek approval of these changes from the site plan reviewer.

During each inspection, the inspector keeps a mental checklist and enters the information into the tracking database immediately after the inspection. Additionally, the inspector completes a hard copy daily log for the City's and his personal record.

Observation 17. The City of Hampton E&S inspector was did not complete all bi-weekly inspections and post-rain event inspections.

The City E&S inspector indicated that he is also responsible for inspecting controls implemented per the Chesapeake Bay Resource Protection Area (RPA) requirements and inspecting dredging projects, which limits the inspector's ability to complete the bi-weekly and post-rain event inspections. The EPA inspection team requested inspection records for all sites inspected between March 15 and March 31, 2010. It was expected that all 38 active sites would have been inspected during this 17 day period. However, the City of Hampton provided records only for five sites. Also, a significant rain event occurred on March 29, 2010. The records provided indicate that only one site had been inspected between March 29 and 31, 2010. The City E&S inspector indicated that he cannot inspect all sites within 48 hours after a rain event and that he must prioritize large sites.

III.D.2. Erosion and Sediment Control Enforcement

During the interview session conducted on March 31, 2010, the EPA inspection team questioned the City E&S inspector about E&S enforcement. The City E&S inspector indicated that he does not provide any documentation of the inspection to the construction site supervisor which is inconsistent with Section 6.3.1 of the MS4 Program Plan which indicated a copy of the inspection report is provided. The City E&S inspector indicated that the construction supervisor is notified verbally of any problems and the timeline for resolving the problems during the City's E&S inspection. The City E&S inspector usually allows ten days for resolving problems unless the problem is severe (e.g., sediment is being discharge to public waters). If problems are not resolved by the time the inspector returns to the site for re-inspection, a written warning is given to the supervisor, responsible land disturber, and property owner. After the warning, a Notice to Comply may be issued if needed and a summons can be obtained if the problem is still not fixed. This may result in a stop work order for a period of ten days or an increase in the surety.

The inspector does not check to make sure self-inspections are being performed in accordance with VAR10, *General Permit for Discharges of Stormwater from Construction Activities*, adopted July 1, 2009 (hereafter, Construction General Permit). He does not contact DCR if a problem is noted; however, the inspector may contact Virginia Department of Environmental Quality if he notices a problem such as an oil spill. The inspector does not check for concrete washout areas.

Additionally, after visiting the BMPs on the Liberty Baptist Church site, as discussed in Section III.A.3 of this report, the EPA inspection team also visited the active construction area on that site. The EPA inspection team noted the following:

- Sediment tracking out of the construction entrance. Additionally, mud was observed on existing road within the site (Photographs 47 and 48).
- Inadequate silt fencing. Areas of silt fence were torn, had fallen over, or were missing (Photographs 49 through 52). Sediment was present outside the silt fencing.
- Inadequate stock pile stabilization. Stockpiles of dirt were not covered, seeded, or surrounded by silt fence (Photograph 53).
- Sediment entering the concrete swale feeding the east ponds. No protection from the construction area or bank stabilization was present to prevent sediment from entering the swale (Photograph 54).
- Erosion and sediment deposition around a newly constructed influent pipe to the second pond. The inlet protection measures were not sufficient. Orange fencing was placed around the pipe but was not preventing sediment from entering the pipe and pond (Photographs 55 through 57). Additionally, the construction supervisor indicated a "gutter buddy" was used to block sediment from entering the inlet at the curb level and a sock was placed inside the inlet, however, the gutter buddy was missing.
- Inadequate protection between the construction area and the third pond, located on the west side of the site. Further information is provided in Section III.A.3 of this report.

Observation 18. The City of Hampton E&S inspector did not enforce proper construction E&S controls at the Liberty Baptist Church construction site.

Part I.A.1.d(1) of the permit requires that Hampton enforce City ordinances pertaining to erosion and sediment control. The Construction Supervisor at the Liberty Baptist Church site indicated that the City

E&S inspector visited the site every two weeks and that self-inspections were conducted as specified by the Construction General Permit. However, the EPA inspection team noted many issues on the site, including: missing and torn silt fence, inadequate inlet protection, damage to permanent BMPs from active construction activities, and sediment tracking out of the construction entrance. The E&S inspector could not provide documentation of follow-up to these issues.

Observation 19. The City of Hampton was not adequately educating construction site operators that E&S plans should be modified as needed to reduce pollutants in stormwater runoff from construction sites.

Permit Part I.A.1.d(2) requires that Hampton provide an education program for construction site operators. The Construction Supervisor at Liberty Baptist Church had not installed a needed silt fence because no silt fence was required at that location on the approved site plan. The Construction Supervisor was not aware that he should be modifying the E&S plan when needed to reduce pollutants in stormwater runoff from the construction site, even though this is a requirement in the Construction General Permit.

III.D.3. Inspection Tracking Database

The requirements for E&S program tracking are provided in Section 6.4.1 of the MS4 Program Plan. The City of Hampton uses the Permits Plus database to track all land-disturbing permits and the associated inspections. The database contains numerous criteria, of which erosion and sediment control inspection criteria make up a portion. For example, for site LD09-00142, the City E&S inspector must scroll through 81 inspection items covering all aspects of the construction site to access the items relevant to E&S, located throughout the list (Exhibit 21, LD09-00142 Permits Plus Entry).

After the inspection, the inspector must access each relevant criterion individually and enter the date of the inspection and his comments.

There is no SOP for entering E&S inspection data into the Permits Plus database. The EPA inspection team formally requested “construction inspection standard operating procedures” (Item 15 in Exhibit 22, Team 2 Records Request) but the City did not produce the requested records. The distinction between the items (e.g., “Site Inspection” and “Bi-Weekly E & S Inspection”) and what information is covered by the item is not clear in some cases (e.g., the same note “BMP ok to sod” appears under the categories “Site Inspection”, “Inspection Request”, and “BMP Install”.) The comments inserted by the E&S inspector are not always clear (e.g., “IN PROGRESS” under “Civil-Site”). Refer to Exhibit 21, LD09-00142 Permits Plus Entry.

Observation 20. The City of Hampton did not have all E&S inspection records documenting routine inspections for all active construction sites.

Permit Part I.C.2.c requires that Hampton track the number of E&S inspections in a database. For site LD09-00142, the last inspection documented in the City’s “Permits Plus” site plan review and inspection tracking database was November 6, 2009. However, the City E&S inspector indicated that he had performed inspections since then and had entered the inspection results into the database. Other than his daily logs, the E&S inspector had not kept hard copies of the missing inspection reports. This is inconsistent with Section 6.3.1 of the MS4 Program Plan which indicates that copies of the inspection reports are kept on file. The EPA inspection team formally requested the inspector’s “work records (hard copy file documenting daily activities) related to E&S inspections at the active project at 1212 N. King St (Land Disturbing Permit Number: LD09-00142)” (Exhibit 23, Records Request Email March 31, 2010); however, only logs for November 30, 2009 through January 7, 2010 were provided (Exhibit 24, Daily Logs). Additionally, the City of Hampton provided the “Permits Plus” inspection records for site LD09-00071 (Exhibit 21, LD09-00071 Permits Plus Entry) and indicated that this identification number was an

earlier number used for site LD09-00142. The City E&S inspector had mistakenly entered his recent inspections under this ID. The inspection records show inspections on March 26 and 29, 2010. It is unclear whether any inspections occurred between January 7 and March 26, 2010 and if so, whether any documentation of the inspections can be recovered.

The EPA inspection team also formally requested all recent inspection records, daily logs, and database output for the Liberty Baptist Church site, LD09-00074 (Exhibit 25, Records Request Email April 8, 2010). Daily logs were provided for November 30, 2009 through January 7, 2010. Both the daily logs and the database output indicate that the last inspection at this site was December 14, 2009. However, during EPA's site visit to Liberty Baptist Church, the construction site supervisor indicated that the City E&S inspector visited the site approximately every two weeks. It is unclear whether any documentation of these inspections is available.

Additionally, City of Hampton plan review and E&S inspection staff are not able to use the Permits Plus database easily and effectively. The EPA inspection team requested records from the Permits Plus database for all E&S inspections conducted at LD09-00142 by date and a list of all active construction sites including name, location, status, and project type; however, the City personnel stated they were not able to obtain this information in a user-friendly format without the aid of the database manager.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In The Matter of

City of Hampton
22 Lincoln St., 4th Floor City Hall
Hampton, VA 23669

Proceeding Under Sections 308 and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318
and 1319(a)

FINDINGS OF VIOLATION
ORDER FOR COMPLIANCE
AND
REQUEST FOR INFORMATION

RECEIVED

2011 SEP 28 PM 3:20

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

I. STATUTORY AUTHORITY

1. The following Findings of Violation and Order for Compliance ("Order") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "the Act"). The Information Request is issued under the authority vested in EPA by Section 308 of the CWA, 33 U.S.C. § 1318. The Administrator of EPA has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated it to the Director of the Water Protection Division of EPA Region III.

II. BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with specified requirements of the Act, including a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342 and 40 C.F.R. Part 122.
3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(a), the Commonwealth of Virginia has been authorized by EPA to administer the NPDES program within the Commonwealth of Virginia.
5. Pursuant to Section 309(a)(1) of the Act, 33 U.S.C. § 1319(a)(1), EPA is authorized to enforce the terms of any permit issued by a State under an EPA- approved permit program.
6. A NPDES permit is required for discharges from, among other entities, a large or medium municipal separate storm sewer system, 40 C.F.R. §122.26(a).
7. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).
8. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
9. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
10. The City of Hampton, Virginia (“Respondent” or “Hampton”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
11. Respondent owns, and through its Department of Public Works, Fire Department, Codes Compliance Department, Planning Department, Parks Department, the Hampton Clean City Commission, Fleet Maintenance Department and the 311 Call Center, operates a MS4 located in the City of Hampton, VA.
12. Hampton was issued a Virginia Pollution Discharge Elimination System Permit, VA0088633 (the “MS4 Permit”) which regulates discharges from Hampton’s MS4 by the Virginia Department of Environmental Quality (“VA DEQ”). The MS4 Permit has an effective date of March 8, 2001 and an expiration date of March 8, 2006. In January of 2005, administration of the MS4 program was transferred from VA DEQ to the Virginia Department of Conservation and Recreation (“DCR”). DCR has not yet issued a new MS4 permit to Hampton; therefore, Hampton is currently operating under the conditions of MS4 Permit VA0088633.

13. From March 31-April 1, 2010, a compliance inspection team comprising of authorized representatives of EPA and DCR inspected the MS4 in Hampton. During this inspection, EPA and DCR reviewed Respondent's MS4 program.
14. As part of its application for an MS4 permit, Hampton developed a Storm Water Management Program (the "MS4 Plan") pursuant to 40 C.F.R. 122.26(d)(2)(iv)(A)(2), which requires "A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment."
15. Part I.A.1.a (2) of the MS4 Permit requires that Hampton adhere to and enforce the MS4 Plan.

III. FINDINGS OF VIOLATION

Violation I: Failure to Maintain Records of Site Plan Reviews

16. Section 7.2.2 of the MS4 Plan requires that development site plans be reviewed for consistency with City and State water quality requirements.
17. Section 7.2.2 of the MS4 Program Plan requires the Department of Public Works Land Development Services to maintain site plans on file with records of review.
18. Prior to EPA's inspection, the EPA inspection team requested records of site plan reviews. Hampton did not produce any records of site plan reviews prior to or during EPA's inspection.
19. By not maintaining records of site plan reviews, Hampton violated Part I.A.1.a (2) of its MS4 Permit.

Violation II: Failure to Implement the Current Field Screening Procedures

20. Part I.A.1.b(2) of Hampton's MS4 Permit requires Hampton to continue the implementation of the current field screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm water system. Hampton's current field screening procedures are embodied in the Field Screening Plan and Procedures Manual, which is Appendix C of the MS4 Plan.
21. Section F of the Field Screening Plan and Procedures Manual provides that if testing results in any values that are a cause for concern, a retest of that constituent must be immediately conducted. If a second test shows substantially different results, a third test

must be done. All results must be recorded. If the second test verifies the first test, or if the third test still shows values which are a cause for concern, a sample must be taken immediately for laboratory verification.

22. The City Storm Water Manager verbally told the EPA inspection team that a pH value less than or equal to 5.0 standard units ("s.u.") was the City's cause for concern threshold. At 8:15 a.m. on March 11, 2009, a pH value of 5.1 s.u. was recorded during field screening of an observed dry weather flow at 106 Garrett Drive. At 2:00 pm, the City staff returned to 106 Garrett Drive, conducted another test and found a pH level of 4.7 s.u., which exceeds the cause for concern threshold of 5.0 s.u. City staff did not immediately take another test to address the discrepancy between the two results.
23. By not taking an additional test immediately after the second test indicated a pH level that met the cause for concern threshold, Hampton failed to implement the Field Screening Plan and Procedures Manual, and therefore violated Hampton's MS4 Permit.

Violation III: Failure to Adhere to Storm Water Related Ordinances

24. Part I.A.1.a(2) of the MS4 Permit requires Hampton to adhere to all storm water related ordinances.
25. Hampton City Ordinance Section 33.1-12.1 states that it is unlawful to put, throw, place or deposit or allow to be put, thrown, placed or deposited any substance or pollutant in any area which drains into the storm water system or in any manner pollute the storm water system.
26. During the EPA inspection, the EPA inspection team observed a city official washing a police car at City Fleet Services Center, and the resulting wash-water flow entering a storm water inlet.
27. During the EPA inspection, the EPA inspection team also observed the application of herbicides to the brick sidewalks around City Hall at 22 Lincoln Street, which drain to MS4 inlets nearby. The application of herbicides was not selective and covered the entire brick sidewalk surface. A City Parks and Recreation Department staff member explained to the EPA inspection team that the herbicides consisted of a mixture of Roundup and a marking chalk that turned the sidewalks yellow so that staff could see where the mixture had been applied. The City Parks and Recreation Department staff member indicated that the marking chalk colorants and herbicides would wash away into the MS4 inlets during the next rain event.
28. By failing to adhere to Hampton City Ordinance Section 33.1-12.1, Hampton violated its MS4 Permit.

Violation IV: Failure to Develop Written Standard Operating Procedures for Illicit

Discharge Source Identification

29. Hampton's MS4 Plan Section 5.2.3 requires that written standard operating procedures for illicit discharge source identification be developed in the second year of the permit cycle.
30. Hampton obtained its current MS4 permit on March 8, 2001. The permit was effective on that date. Accordingly, standard operating procedures should have been developed in the second year of the permit cycle, between March 9, 2002 and March 8, 2003.
31. By not developing written standard operating procedures for illicit discharge source identification by March 8, 2003, Hampton violated its MS4 Permit.

Violation V: Failure to Provide Copies of Erosion and Sediment Control Inspection Reports to Construction Site Contractors

32. Hampton's MS4 Plan Section 6.3.1 requires that copies of erosion and sediment control inspection reports are provided to construction site contractors.
33. During the EPA Inspection, Hampton's Erosion and Sediment Control Inspector admitted that he does not provide copies of erosion and sediment control inspection reports to construction site contractors.
34. By not providing copies of erosion and sediment control inspection reports to construction site contractors, Hampton violated its MS4 Permit.

Violation VI: Failure to Conduct Erosion and Sediment Control Inspections of Construction Sites at Required Frequency

35. Hampton's MS4 Plan Section 6.3.1 requires that erosion and sediment control inspectors perform inspections in accordance with State requirements.
36. 4 VAC 50-30-60.B. requires, in relevant part, Hampton to perform periodic inspections at least once in every two-week period [and] within 48 hours following any runoff producing storm event, unless an alternative inspection program is approved by the Virginia Soil and Water Conservation Board prior to implementation.
37. Hampton does not have an alternative inspection program that has been approved by the Virginia Soil and Water Conservation Board.

38. During the EPA Inspection, Hampton's Erosion and Sediment Control Inspector admitted that all construction sites within Hampton are not inspected at least once in every two-week period [and] within 48 hours following any runoff producing storm event.
39. By not providing inspecting all construction sites at least once in every two-week period [and] within 48 hours following any runoff producing storm event, Hampton violated its MS4 Permit.

IV. ORDER

40. AND NOW, this 28th day of September, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), to do the following:
41. Within thirty (30) days of the effective date of this Order, Respondent shall comply with VPDES Permit No. VA0088633.
42. Within fourteen (14) days of the effective date of this Order, Respondent shall submit to EPA certification of Respondent's intent to comply with this Order. A principal executive officer or a ranking elected official must sign on behalf of the Respondent. The certification shall be submitted to:

Andrew Dinsmore (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. REQUEST FOR INFORMATION

43. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
 - (a) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the CWA;
 - (b) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - (c) any requirement under Section 308 of the CWA; and
 - (d) carrying out Sections 305, 311, 402, 404, and 504 of the CWA.

44. Failure to respond as directed to a CWA Section 308 request is punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment. Providing misleading or false information may subject you to civil and criminal sanctions. The information you provide may be used by EPA in administrative, civil or criminal proceedings.
45. You may, if you desire, assert a business confidentiality claim covering all or part of the information requested herein in the manner described in 40 C.F.R. Part 2 Subsection B. Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If no claim of confidentiality accompanies the information requested herein when it is received by EPA, it may be made available to the public by EPA without further notice. You may not withhold any information from EPA on the grounds that it is confidential business information. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act U.S.C. Chapter 35. (See 5 C.F.R. Section 1320.3(c)).

Instructions

46. Identify each person responding to any question contained in this Information Request on behalf of the Respondent, as well as each person consulted in the preparation of the response.
47. For each question, identify each document consulted, examined, or referred to in the preparation of the response or that contains information responsive to the question, and provide a true and correct copy of each such document if not provided in response to another specific question.
48. Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the question to which it corresponds.
49. To the extent information requested herein was previously provided to EPA by City of Hampton, there is no need to provide it again, but rather identify the information and the date it was previously provided.
50. If requested information or documents are not known or are not available at the time of your response to this Information Request, but later become known or available, the Respondent must supplement its response to EPA. Moreover, should the Respondent find at any time after submission of its response that any portion is or becomes false, incomplete, or misrepresents any facts, the Respondent must provide EPA with a corrected response as soon as possible.

51. All submissions provided pursuant to this request shall be signed and dated by a principal executive officer or a ranking elected official to include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I certify as having responsibility for the persons who, acting under my direct instruction, made the verification that this information is true, accurate, and complete."

Signed _____
Title _____

52. Submit your response to the following individual:

Andrew Dinsmore (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

53. If you have questions regarding this Information Request, you may contact Mark Bolender of the Office of Regional Counsel at (215) 814-2642.

Definitions

54. The term "identify" with respect to a natural person means to provide that person's name, address, telephone number, title, and relationship to Respondent. The term "identify" with respect to a business entity means to provide that entity's name, address, and relationship to the Respondent, and to provide the name, address, telephone number, and title of an individual who can provide information related to, and on behalf of, the entity.

Request

55. AND NOW, this 28th day of September, 2011, Respondent is hereby directed, pursuant to Section 308 of the CWA, 33 U.S.C. Section 1318, to provide the following information:
56. Provide all information regarding annual storm water training for employees and identify all employees who receive annual storm water training.
57. Identify all employees, contractors, and subcontractors responsible for applying pesticides, and indicate whether such individuals have received training on pesticide application and/or state certification. Provide all other information regarding pesticide application training for employees.

58. Identify all employees responsible for performing storm water inspections at industrial facilities. Provide all information about storm water training such individuals have received
59. Provide all information regarding all Best Management Practices maintenance inspections that occurred on March 5, 2010, including the number of inspections conducted, the location of each inspection, any maintenance and repair needs found during such inspections, and all documentation of such inspections.
60. Provide the list of facilities that meet the categories defined in Part I.a.1.c. of Hampton's MS4 Permit. Specify those facilities that were identified upon the list creation (or at the time of MS4 Permit issuance, whichever is later), as well as the dates when new or previously unidentified facilities were added to the list. Provide all information about any storm water inspections at such facilities.
61. Provide all information regarding construction site erosion and sediment control inspection tracking, including the frequency at which inspections are conducted.
62. Your response must be submitted within 30 days of receipt of this Request for Information.

VI. GENERAL PROVISIONS

63. Issuance of this Finding of Violation, Order for Compliance, and Request for Information shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply with this Order or the Act may result in a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent will be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
64. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans pursuant to Section 508 of the Act.
65. Respondent shall permit EPA or its authorized representative to inspect any site at reasonable times to confirm that Respondent is in compliance with this Order and with any applicable permit. EPA reserves all existing inspection authority.

66. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve Respondent of their obligations to comply with any applicable Federal, state, or local law or regulation.
67. Violation of the terms and conditions of this Finding of Violation, Order for Compliance, and Request for Information constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

EFFECTIVE DATE

This FINDINGS OF VIOLATION, ORDER FOR COMPLIANCE, AND REQUEST FOR INFORMATION is effective upon receipt.

Date: 9/28/11



John M. Capadusa, Director
Water Protection Division
EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

City of Hampton
22 Lincoln Street
4th Floor, City Hall
Hampton, Virginia 23669

Respondent.

Proceeding to Assess a Class II
Administrative Penalty Under
Section 309(g) of the Clean Water Act

Docket No.: CWA-03-2013-0095

**CONSENT AGREEMENT
AND FINAL ORDER**

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2013 JUN 17 PM 2:57

RECEIVED

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and the City of Hampton ("Hampton" or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

5. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.

3. Pursuant to 40 C.F.R. §122.26(a)(3), NPDES Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems ("MS4").

4. Respondent is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

5. Respondent is therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

6. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

7. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." *Id.* § 122.26(b)(13).

8. MS4 includes, *inter alia*, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

9. A medium MS4 means “all separate storm sewers that are: (i) Located in an incorporated place with a population of 100,000 or more but less than 250,000 ... ; [or] (ii) Located in the counties listed in appendix I ... [or] (iii) Owned or operated by a municipality other than those described in paragraph (b) (7)(i) or 9(ii) of this section and that are designated by the Director as part of a large or medium municipal separate storm sewer system...” 40 C.F.R. § 122.26(b)(7).

10. Respondent’s population at the time of the inspection was approximately 136,000, and Respondent is therefore a medium MS4

11. Therefore, Hampton is a medium MS4 within the meaning of 40 C.F.R. § 122.26(b)(7).

12. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975.

13. On March 8, 2001, VADEQ issued Permit VA0088633 (the “MS4 Permit”) to Hampton to govern the discharge of storm water through the City’s MS4.

14. The Permit requires Respondent to adhere to the Storm Water Management Program Requirements (Part I) and Conditions Applicable To All VPDES Permits (PART II) of the Permit.

15. On March 31 and April 1, 2010 EPA conducted an inspection of Hampton’s MS4 Program and its compliance with Permit VA0088633.

16. On September 28, 2011 EPA issued an Administrative Order and Request for Information to the City of Hampton, Docket No.: CWA-03-2011-0311DN, in relation to the inspection findings.

17. On November 28, 2011, EPA received Hampton’s response to the Administrative Order and Request for Information, Docket No.: CWA-03-2011-0311DN.

III. FINDINGS OF VIOLATION

1. The Permit requires Respondent to, among other things: (1) Conduct erosion and sediment control inspections of construction sites within 48 hours following any runoff producing storm event; (2) Provide copies of the erosion and sediment control inspection reports to construction site contractors; and (3) Comply with all stormwater related ordinances.

2. The March 31, 2010 inspection and Hampton's November 28, 2011 response revealed that, as of November 28, 2011, Respondent had failed to: (1) Conduct erosion and sediment control inspections of construction sites within 48 hours following any runoff producing storm event; (2) Provide copies of the erosion and sediment control inspection reports to construction site contractors; and (3) Comply with all stormwater related ordinances.

3. Respondent's failure to comply with the Permit by failing to comply with the above requirements violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

1. Respondent admits the jurisdictional allegations of the Complaint and the Findings of Fact and Conclusions of Law set forth in Section II, above.

2. Respondent neither admits nor denies EPA's Findings of Violation set forth in Section III, above.

3. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

4. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

5. Each party to this action shall bear its own costs and attorney fees.

6. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

7. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

8. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA

has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate Virginia official.

9. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of sixty two thousand dollars (\$62,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

10. Respondent shall pay the total administrative civil penalty of sixty two thousand dollars (\$62,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, CWA 03-2013-0095, Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact Eric Volck (513-487-2105)

By overnight delivery:

U.S. Bank
Government Lock Box 979077
US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Mark Bolender, Esquire
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

12. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

13. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

14. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

15. The penalty specified in Section III, Paragraph 9, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

16. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

17. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

18. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

1. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after the conclusion of a 40- day public notice period. This CAFO will become final and effective 30 days after issuance, 33 U.S.C. § 1319(g)(4), 40 C.F.R. § 22.31(b).

FOR RESPONDENT, CITY OF HAMPTON:


Date: 2/20/13

By: Mary Bunting
Mary Bunting, City Manager

CITY OF HAMPTON
OFFICE OF THE CITY ATTORNEY
Approved as to legal form and sufficiency
Date: 2.15.2013
[Signature]
Attorney

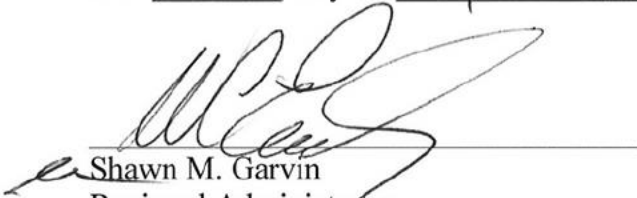
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: April 19, 2013


Jon M. Capacasa, Director
Water Protection Division
U.S. EPA Region III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 23RD day of April, 2013


Shawn M. Garvin
Regional Administrator
U.S. EPA Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 28 2013

Mr. Kurt Hodgen
City of Harrisonburg
345 South Main Street
Harrisonburg, VA 22801

Re: Docket No. CWA-03-2013-0082DN
Administrative Order for Compliance and Request for Information

Dear Mr. Hodgen:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the City of Harrisonburg submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the City: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the City of Harrisonburg has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.



If you require any information or assistance regarding this matter, please contact Peter Gold,
NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jon M. Capacasa", with a large, stylized initial "J" and a long horizontal flourish extending to the right.

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR
Jerome Brooks, VA DEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

City of Harrisonburg
345 South Main Street
Harrisonburg, VA 22801

Docket No. CWA-03-2013-0082DN

**ORDER FOR COMPLIANCE
AND
INFORMATION REQUEST**

Respondent

I. STATUTORY AUTHORITY

- 1) This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- 2) Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control

Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.

- 6) On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- 11) "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:
 - a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm

drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and

- b) "Designed or used for collecting or conveying storm water. . ." 40 C.F.R. § 122.26(b)(8)(i).
- 13) A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
- a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- 14) Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
- a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. *See also* 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- 16) Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . ."
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- 20) City of Harrisonburg, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Harrisonburg, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Blacks Run (PS22), Cooks Creek (PS23) and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Blacks Run (PS22), Cooks Creek (PS23) and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- 24) The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- 26) During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. VIOLATIONS

Count 1: MCM 3: Illicit Discharge Detection and Elimination

- 27) Section II.B.3.d of the Permit requires the Respondent to "develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4."
- 28) Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.

- b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold
U.S. EPA, Region III (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE
DCR Division of Stormwater Management
Office of Regulatory Programs Manager
Virginia Department of Conservation and Recreation
203 Governor Street, Suite 206
Richmond, VA 23219

- c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

VII. GENERAL PROVISIONS

- 34) Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- 35) This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- 36) Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

- 29) Respondents MS4 Program Plan requires that: "The City of Harrisonburg will develop and implement an outfall reconnaissance program to identify potential sources of pollutants identified in the TMDL's Waste Load Allocations from anthropogenic activities."
- 30) Based on EPA's 2011 File Review Respondent either:
- a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. CONCLUSIONS OF LAW

- 31) Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this 28th day of March, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

- 32) Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 33) Within thirty (30) days of the effective date of this Order, Respondent shall:
- a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or

VIII. JUDICIAL REVIEW

- 37) Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.

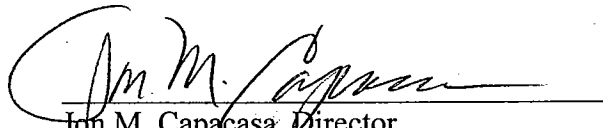
IX. OPPORTUNITY TO CONFER

- 38) Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. EFFECTIVE DATE

- 39) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 28 2013


Jon M. Capacasa, Director
Water Protection Division
U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

APR-6 PM 4:26
PHILA. PA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank J. Thornton
Chairman
Board of Supervisors
Henrico County
4301 East Parham Road
Henrico, Virginia 23228

Re: Administrative Order (EPA Docket No. CWA-03-2011-0133 DN)

Dear Mr. Thornton:

The United States Environmental Protection Agency ("EPA") has identified violations of requirements contained in the Clean Water Act ("Act") and the Virginia Pollutant Discharge Elimination System ("VPDES") permit, VA0088617, applicable to the Henrico County for its municipal separate storm sewer system (MS4) located in Henrico County, Virginia. Enclosed is a copy of an Administrative Order (Order) issued this date pursuant to Section 309(a) of the Act, as amended, 33 U.S.C. § 1319(a). This Order contains findings that you have violated Section 301 of the Act, 33 U.S.C § 1311.

You should carefully read the contents of the enclosed ORDER, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the ORDER may result in further enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

If you require any information or assistance regarding this matter, please contact Christopher Menen, U.S. EPA Region III, NPDES Enforcement Branch, 215-814-2368 or Pamela Lazos, Senior Assistant Regional Counsel, 215-814-2658.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency, Region III

Enclosure

cc: Anne Crosier, VA DCR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF :

Henrico County
4301 East Parham Road
Henrico, VA 23228

Docket No. CWA-03-2011-0133DN
FINDINGS OF VIOLATION
ORDER FOR COMPLIANCE

Respondent

I. STATUTORY AUTHORITY

1. This Order for Compliance ("Order") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 308 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1318 and Section 309(a) of the CWA, 33 U.S.C. § 1319(a). The Administrator has delegated these authorities to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III pursuant to Delegation No. 2-22.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
3. EPA is authorized under Section 308 of the Act, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
 - (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the Clean Water Act;
 - (b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - (c) Any requirement under Section 308 of the Clean Water Act; and

(d) Carrying out Sections 305, 311, 402, 404, and 504 of the Clean Water Act.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
5. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
6. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
7. The term "municipal separate storm sewer system" (MS4) includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
8. A NPDES permit is required for discharges from a Phase I MS4 serving a population of 250,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p)(2)(C); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
9. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Virginia Department of Environmental Quality ("VADEQ") to issue NPDES permits on May 20, 1991. On December 30, 2004, EPA approved the Commonwealth of Virginia's request to transfer the permitting program for construction and MS4 stormwater discharges from VADEQ to the Virginia Department of Conservation and Recreation.

III. EPA FINDINGS AND ALLEGATIONS

10. Henrico County, Virginia (Respondent) is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
11. Respondent, at all times relevant to this Order, has owned and/or operated an MS4, located within the geographic boundaries of Henrico County, Virginia ("VA").
12. The County of Henrico is located in Central Virginia and encompasses a total area of 244 square miles. Henrico County is bordered by the James River, the Tuckahoe Creek, and the Chickahominy River. Stormwater from the County drains to "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

13. The Virginia Department of Environmental Quality (VADEQ) issued to Respondent an NPDES MS4 Discharge Permit No. VA0088617 on March 18, 2003, which permit was modified on March 5, 2004 (hereinafter the "MS4 Permit"). The MS4 Permit expired on March 17, 2008, and has been administratively extended to the present.
14. On April 19 and 20, 2010, a compliance inspection team comprised of EPA staff and authorized representatives of EPA inspected Respondent's MS4 program.

IV. FINDINGS OF VIOLATION

A. Illicit Discharge Detection and Elimination

15. Pursuant to Part I.A.1.b. of the Permit, the Respondent's Storm Water Management Program shall contain a "program and schedule to detect and remove, or to notify a discharger to apply for a separate VPDES permit for, unauthorized non-storm water discharges and/or improper disposal into the municipal separate storm sewer system.
16. Pursuant to Part I.A.1.b.(2) of the Permit, "[t]he permittee shall continue the implementation of the current field screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm sewer system. Priority shall be placed on segments of the storm sewer system which receive drainage from industrial and commercial sources."
17. Pursuant to Part I.B.5. of the Permit, "[t]o the extent practicable, subject to annual appropriations, the permittee shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A. of this permit."
18. At the time of the inspection, Henrico County's inspector stated that in 2007, Henrico County inspected approximately 1200 inlets and outfalls. In 2008, the number of inspections dropped to 400 and in 2009, the County inspected 150 inlets and outfalls. There are over 1000 outfalls in Henrico County. Currently, Henrico County has discontinued the inlet inspections and only inspects a limited number of outfalls.
19. Respondent failed to comply with Parts I.A.1.b.(2) and I.B.5. of the Permit by discontinuing implementation of the field screening procedures in place at the time the Permit was issued, and by failing to commit adequate resources to the inspections. Respondent's actions resulted in an inability to inspect a sufficient number of inlets and outfalls in the County in violation of its Permit.
20. Pursuant to Part I.A.3. of the Permit (Annual Report), and as part of the Respondent's annual reporting requirements, Respondent shall submit "a summary of maintenance activities performed on structural BMPs in accordance with Part I.A.1.a.(1) (which requires the permittee to continue with the existing maintenance program for its structural controls) , is required to be submitted to VADEQ in Respondent's annual report. See Part I.A.3.a.(1).

21. On an annual basis, Henrico County's Dry Weather Screening Inspector generates a list of all outfalls that require cleaning. The data base is marked "TRUE," and an email is sent to the Road Maintenance Division to enter a cleaning request into their work order system. Once the Road Maintenance Division completes the work, the data base entry is changed from "Needs Cleaning" to "False." At the time of inspection, Complainant discovered that Respondent failed to document follow-up actions taken after potential illicit discharges were found. Specifically, there was no tracking information regarding routine maintenance and no procedure to describe work performed at a particular outfall other than to change the heading from "needs cleaning" to "false".
22. Respondent failed to comply with Parts I.A.3. (annual reporting), and I.B.5 (implementation of the Storm Water Management Program), of the Permit, by failing to provide a summary of maintenance activities on its structural BMPs and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program, which includes tracking of outfall inspections, in violation of the Permit.
23. Pursuant to Part I.A.1.b.(3), "[w]here necessary, the permittee shall conduct on-site investigation of potential sources of unauthorized non-storm water discharges. The permittee shall act as expeditiously as possible to require a discharger to eliminate unauthorized non-storm water discharges except discharges identified in Part 1.B.4." of the Permit. If a VPDES permit is needed, but not obtained by the discharger, the permittee shall take actions to implement the applicable provisions of the County Code. The permittee shall require immediate cessation of improper disposal practices upon identification of responsible parties.
24. Upon review of the Respondent's outfall inspection database, the EPA inspection team noted several instances that a potential illicit discharge was identified during an inspection and no information was logged into the inspection database. In addition, a comparison of the inspection database entries with corresponding paper records found inconsistencies and missing information.
25. Respondent failed to comply with Parts I.A.1.b.(3), I.A.1.b(2) and I.B.5. of the Permit by failing to properly document potential illicit discharge investigations; failing to implement current field screening procedures; and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program in violation of the Permit.
26. A review of the Respondent's inspection database identified several entries indicating that Henrico County inspectors could not confirm the location of outfalls that the County cannot visually locate. In addition, the Respondent has no protocol for confirming outfalls that cannot be visually found.
27. Respondent failed to comply with Parts I.A.1.b.(2) and I.B.5., of the Permit by failing to implement current field screening procedures, and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program in violation of the Permit.

Industrial and Commercial Facilities

28. Pursuant to Part I.B.4. of the Permit, “[t]he permittee shall operate pursuant to the established legal authority described in 40 C.F.R. § 122.26(d)(2)(i), or shall obtain legal authority necessary to control discharges to and from those portions of the municipal separate storm sewer system over which it has jurisdiction.” In addition, pursuant to A.1.b.(1), “[t]he permittee shall implement and enforce all provisions of the County’s Storm Sewer System Discharge Ordinance which prohibits unauthorized non-storm water discharges to the storm sewer system.”
29. Section III of the Respondent’s Storm Water Management Master Plan states “[t]he legal authority to conduct inspections and require compliance is based on the fact they drain to the County’s storm sewer system for which the County holds a NPDES permit or the industry has a SIC code that is required to have a NPDES industrial permit with a Pollution Prevention Plan.”
30. Chapter 10 – Environment, Article VII., Section 10-198 (a) of the Henrico County Code states: “[t]he director shall have authority to carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and non-compliance with the condition of the county’s VPDES permit, including the prohibition of illicit discharges to the storm sewer system. The director may monitor storm water outfalls or other components of the storm sewer system as may be appropriate in the administration and enforcement of this article.”
31. Pursuant to Part I.A.1.d.(1), “[t]he permittee shall continue to operate in accordance with, and continue enforcement of, the stormwater management requirements of the Chapter 10, Environment, and Chapter 24, Zoning, of the Code of the County of Henrico Virginia, for land disturbing activities.”
32. Henrico County staff stated that the County has not established the necessary legal authority to conduct routine inspections of private industrial and commercial facilities for stormwater discharges unless a release is suspected based upon outfall screening information, or if a potential release is identified by another Henrico County agency. Respondent relies on industrial and commercial facilities submitting to voluntary inspections and notifies the facility thirty days in advance of the inspection. However, under Chapter 10 – Environment, Article VII, Section 10-198, Respondent has designated inspection authority to the County inspectors.
33. Pursuant to Art. VII. Sec. 10-198 (b), of the Henrico County Code, “[t]he director shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of the county’s VPDES permit.”
34. Respondent failed to comply with Part I.B.4. of the Permit by failing to have a program to monitor and inspect industrial facilities and thereby control discharges to and from those portions of the municipal separate storm sewer system over which it has jurisdiction.

35. Pursuant to Part I.A.1.c.(2) of the Permit, "[t]he permittee may monitor, or require the facility to monitor, storm water discharges associated with industrial activity to the municipal separate storm sewer system from facilities described in Part I.A.1(c)."
36. Henrico County is not completing all industrial and commercial facility inspections that the County has identified as necessary due to a lack of MS4 inspection staff. EPA's review of the County's inspection records determined that the Respondent is not conducting the necessary inspections at industrial and commercial facilities identified as potential sources of contaminated storm water runoff.
37. Respondent failed to comply with Part I.A.1.c., by failing to provide: "[a] program to monitor and control pollutants in storm water discharges from municipal landfills, hazardous waste treatment, storage and disposal facilities, industrial facilities subject to Section 313 of the Emergency Planning and Community Right to Know Act, and facilities determined by the permittee to be contributing substantial pollutant loadings," and Part I.B.5. of the Permit by failing to "provide adequate finances, staff, equipment and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A." in violation of the Permit.
38. On April 19 and April 20, 2010, EPA accompanied the Henrico County Industrial Inspector on three industrial facility inspections. Numerous potential violations noted by the EPA inspection team were not cited by the County Inspector. In addition, the EPA Inspection Team witnessed the County Inspector failing to note evidence of potential violations and fully investigate other potential noncompliance identified during the three facility inspections. Respondent is not conducting thorough inspections of industrial facilities and therefore, is not identifying all of the facilities contributing substantial pollutant loadings.
39. Respondent failed to comply with Part I.A.1.c. of the Permit by failing to monitor and control pollutants in storm water discharges from industrial facilities determined by Henrico County to be contributing substantial pollutant loadings.
40. Pursuant to Part I.B.2. the Permit, "[t]he permittee shall ensure that all pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.A. of this permit," and further, pursuant to Part I.B.3., the permittee shall effectively prohibit non-storm water discharges into the municipal separate sewer system... or shall allow such discharges..." where..."authorized by a separate VPDES permit."
41. The EPA inspection team and the Henrico County Industrial Inspector conducted site visits of the Respondent's Central Automotive Maintenance (CAM) garage and the County salt storage facility. At the CAM facility, the EPA inspection team noted evidence of numerous oil spills in close proximity to storm drains, open dumpsters, outdoor above-ground petroleum storage tanks without secondary containment. At the salt storage facility, the EPA inspection team noted dark stains around the retention pond indicating a possible release, compromised silt fencing near a wetland, and uncovered stockpiles.

42. Respondent failed to comply with Parts I.B.2. and 3. of the Permit by failing to require secondary containment around above-ground petroleum storage tanks, among other things, and to ensure that all pollutants discharged from the municipal separate storm sewer system were reduced to the maximum extent practicable through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.A. of the Permit.

Construction Sites – BMPs

43. Pursuant to Part I.A.1.d., Respondent's Permit, shall contain "a program to continue implementation and maintenance of structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites."
44. On April 20, 2010, the EPA Inspection Team witnessed an inspection of a Henrico County Public School by a Henrico County Environmental Inspector. The site map did not designate a location for a concrete washout area, a requirement of the Virginia Storm Water Management Program General Permit. Due to the absence of a designated concrete washout area at the Site, concrete wash water was observed being actively released into the ground surface. The County Environmental Inspector did not identify deficiencies pertaining to the non-sediment pollutants while on site and did not document the aforementioned deficiencies in County's Erosion and Sediment Control Inspection Report.
45. Respondent failed to comply with Part I.A.1.d. of the Permit by failing to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites.
46. The Virginia Erosion and Sedimentation Control Regulations at 4VAC50-30-06B, Maintenance and Inspections, requires Respondent to "provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two week period, within 48 hours following any runoff producing storm event and at the completion of the project prior to release of any performance bonds."
47. The EPA Inspection Team review found that the Respondent does not maintain records to document the type of erosion and sediment control inspection performed, does not provide a structured format to facilitate documenting the inspection type and does not maintain records to document that inspections are carried out in accordance with Section 10-41 of the Henrico County Erosion and Sediment Control Ordinance and the Virginia Erosion and Sediment Control Regulations.
48. Respondent failed to comply with Part I.A.1.d(1) of the Permit by failing to operate in accordance with the stormwater management requirements of Chapter 10, Environment, of the Code of the County of Henrico Virginia and the Virginia Erosion and Sediment Control Regulations.

Continuing Education

49. Pursuant to Part I.A.1.d.(2), Respondent "shall continue implementation of the education and training program for construction site operators."

50. Respondent has not conducted a formal education and training class for construction site operators since conducting a site contractor workshop on November 7, 2002 prior to the current term of the Permit.
51. Respondent failed to comply with Part I.A.1.d.(2) of the Permit by failing to conduct a formal education and training program for construction site operators.

V. CONCLUSIONS OF LAW

52. Respondent's failure to comply with its MS4 Permit constitutes violations of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

VI. ORDER FOR COMPLIANCE

AND NOW, this 6th day of April, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) and Section 308 of the Act, 33 U.S.C. § 1318, to do the following:

53. Within sixty (60) days of the effective date of this Order, Respondent shall:
- (a) Cease and desist all discharges without a permit to waters of the United States at the Site.
 - (b) Come into compliance with all requirements of its MS4 Permit and Storm Water Management Master Plan.
 - (c) Within forty-five (45) days of the effective date of this Order, Respondent shall submit to EPA a detailed Corrective Action Implementation Plan ("Plan") to modify its storm water management programs to require actions to rectify the violations identified in the Order. Respondent shall include a copy of all Notice of Intent (NOIs) submitted for each municipal facility that requires NPDES permit coverage.
 - (d) Modify in writing its Storm Water Management Master Plan and any other applicable storm water policy or guidance the violations identified in this Order.
 - (e) Provide certification, signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*
54. Respondent's failure to complete all work in a manner consistent with this Order shall be deemed a violation of this Order.

55. The Corrective Action Implementation Plan and all other correspondence should be submitted to:

Christopher Menen, Enforcement Officer
U.S. EPA, Region III, (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2368

VII. GENERAL PROVISIONS

56. Issuance of this Order shall not be deemed an election by EPA to forgo any administrative, civil, or criminal action to seek penalties, fines, or any appropriate relief under the Act for violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, 18 U.S.C. § 1001, and/or a civil judicial action initiated by the EPA and the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
57. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.
58. Respondent shall permit EPA or its authorized representative to inspect any site under its control or authority at reasonable times to confirm that Respondent is in compliance with this Order and with any applicable permit. EPA reserves all existing inspection authority.
59. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or ordinance.

VIII. EFFECTIVE DATE

This ORDER is effective upon receipt.

Date: 4/6/14

Catherine A. Ptas
Jon M. Capacasa, Director
Water Protection Division
EPA, Region III

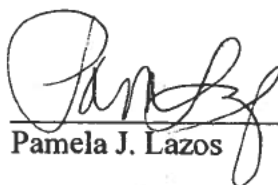
CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I filed the original attached Administrative Order with the Regional Hearing Clerk, and sent a copy thereof to the following person via certified mail, return receipt requested:

Frank J. Thornton
Chairman
Board of Supervisors
Henrico County
4301 East Parham Road
Henrico, Virginia 23228

Date: _____

4/6/11



Pamela J. Lazos

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of	:	Class II Proceeding Under Section
	:	309(g)(2)(A) of the
Henrico County	:	Clean Water Act
4301 Parham Road	:	
Henrico, VA 23228	:	EPA Docket No. CWA-03-2011-
	:	0139
	:	
	:	CONSENT AGREEMENT
Respondent	:	and FINAL ORDER
	:	

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant"), and Henrico County ("Henrico" or "Respondent"), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("*Consolidated Rules*"), 40 C.F.R. Part 22. The parties have agreed that this CAFO resolves Complainant's civil claims pertaining to violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, alleged in an administrative Complaint filed on April 6, 2011.
2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act. Violations occurring after January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$16,000 per day for each day the violation continues, up to a maximum of \$177,500.

II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

3. Respondent neither admits nor denies the factual allegations contained in Paragraphs 3 through 52 of the administrative Complaint filed on April 6, 2011.
4. Respondent admits the jurisdictional allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

5. As described in the Findings of Fact and Jurisdictional Allegations referred to in Section II, above, Respondent neither admits nor denies it has violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and likewise neither admits nor denies that it is therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).

IV. CONSENT AGREEMENT AND FINAL ORDER

6. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
7. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
8. Each party to this action shall bear its own costs and attorney fees.
9. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
10. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
11. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent CONSENTS to pay a civil penalty in the amount of eighty-two thousand dollars (\$82,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein. Failure to comply with the payment terms will result in EPA seeking additional penalties under the Consent Agreement.
12. Respondent shall pay the total administrative civil penalty of eighty-two thousand dollars (\$82,000) for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), by either mailing a cashier's check or certified check, or wire transfer, or automated transaction for the penalty to "Treasurer, United States of America," in one of the following ways:

By regular mail:

Regional Hearing Clerk
U.S. EPA Region III
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

By overnight delivery:

U.S. Bank, Government Lock Box 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

By Automated Clearinghouse (ACH):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Respondent shall send notice of such payment, including a copy of the check or automated transaction, to the Regional Hearing Clerk at the following address:

Lydia Guy

Regional Hearing Clerk
Mail Code 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251, *et seq.*, or any regulations promulgated thereunder.
14. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains

delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

15. This Consent Agreement and Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
16. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any other applicable provision of law.
17. The penalty specified above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
18. Entry of this CAFO is a final settlement of all civil violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
19. In addition, EPA shall have the right to seek additional penalties under this CAFO should Respondent fail to fulfill its obligations under this CAFO.
20. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
21. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.


V. **EFFECTIVE DATE**

22. This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5), 33 U.S.C. § 1319(g)(5).

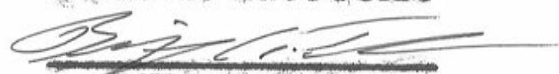
**FOR THE COMPLAINANT, UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY:**

Jon M. Capacasa
Director, Water Protection Division
U.S. EPA Region III

FOR RESPONDENT HENRICO COUNTY:



John A. Vithoulkas
Acting County Manager
County of Henrico, Virginia

APPROVED AS TO FORM

Asst. **COUNTY ATTORNEY**

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Consent Agreement and Final Order, and that copies of this document were sent to the following individuals in the manner described below:

By hand delivery:

Regional Judicial Officer Renee Sarajian
EPA Region III
1650 Arch St.
Philadelphia, PA 19103

By first class mail:

Benjamin A. Thorp, Esquire
County of Henrico
Office of the County Attorney
4301 East Parham Road
Henrico, Virginia 23228-2752

Date: _____

Pamela J. Lazos
Senior Assistant Regional Counsel
US EPA Region III



**HENRICO COUNTY
MUNICIPAL SEPARATE STORM
SEWER SYSTEM (MS4)
INSPECTION**

**HENRICO
DEPARTMENT OF PUBLIC WORKS
10431 WOODMAN RD
GLEN ALLEN, VA 23060**

**FINAL
JULY 2010**

**U.S. Environmental Protection Agency, Region III
Water Protection Division
Office of NPDES Enforcement (3WP42)
1650 Arch Street
Philadelphia, PA 19103**

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EXECUTIVE SUMMARY**Municipal Separate Storm Sewer System (MS4)
Inspection Report
Henrico County, Virginia**

From April 19 through 20, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, inspected the municipal separate storm sewer system (MS4) program of the County of Henrico, Virginia. Discharges from the County's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088617, effective March 18, 2003. The purpose of this inspection was to evaluate compliance with the County's permit VA0088617, which is included in Attachment 1. The inspection focused specifically on the following sections of the permit in relation to the County's MS4 program: (1) Structural and Source Control Measures; (2) Unauthorized Discharges and Improper Disposal; (3) Runoff from Industrial and Commercial Facilities; and (4) Runoff from Construction Sites.

Based on the information obtained and reviewed, the EPA's compliance inspection team made several observations concerning the County's MS4 program related to the specific permit requirements evaluated. Table 1 summarizes the permit requirements and the observations noted by the inspection team.

Table 1. Observations Identified During the Henrico Inspection (4/19/10 – 4/20/10)

Virginia Permit Number VA0088617 Requirement	Observations
I.A.1.a – Structural and Source Control Measures	No observations for this element of the permit.
I.A.1.b – Unauthorized Discharges and Improper Disposal	Observation 1. Henrico County is unable to inspect all stormwater inlets and outfalls. Observation 2. Henrico County does not document follow up actions taken after potential illicit discharges are found. Observation 3. Henrico County does not confirm the location of outfalls that the County cannot find visually.

Table 1. Observations Identified During the Henrico Inspection (4/19/10 – 4/20/10)

Virginia Permit Number VA0088617 Requirement	Observations
I.A.1.c – Runoff from Industrial and Commercial Facilities	Observation 4. Henrico County does not schedule inspections as frequently as needed to monitor and control pollutants from municipal landfills.
	Observation 5. Henrico County has not established legal authority to inspect private industrial and commercial facilities for stormwater purposes.
	Observation 6. Henrico County is not completing all industrial and commercial facility inspections that the County has identified as necessary.
	Observation 7. Henrico County is not adequately identifying all facilities contributing substantial pollutant loadings.
	Observation 8. The Henrico County Industrial Inspector does not conduct the thorough inspections needed to monitor and control pollutants from industrial facilities.
	Observation 9. Henrico County is not adequately minimizing pollutant discharges from County industrial facilities.
I.A.1.d – Runoff from Construction Sites	Observation 10. Henrico County Environmental inspectors do not assess non-sediment, construction site pollutant sources.
	Observation 11. Henrico County's Erosion and Sediment Control inspection documentation was not in accordance with the Henrico County Erosion and Sediment Control Ordinance.
	Observation 12. Henrico County has not conducted a formal education and training class for construction site operators during its current MS4 permit term.

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Attachment 1: County of Henrico’s Permit (VPDES Permit VA0088617)	
Attachment 2: Sign-In Sheet	
Attachment 3: Exhibit Log	
Attachment 4: Photograph Log	

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I. INTRODUCTION

From April 19 through 20, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, (hereafter, collectively, EPA inspection team) inspected the municipal separate storm sewer system (MS4) program of the County of Henrico, Virginia (hereafter, the County, Henrico, or the County of Henrico). Discharges from the County's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088617, effective March 18, 2003. The purpose of this inspection was to evaluate compliance with the County's Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088617 (hereafter, the permit), which is included in Attachment 1. The following personnel participated in this inspection:

Department of Public Works ¹ :	Mr. Chris Winstead, Assistant Director Mr. Jeff Perry, Engineering & Environmental Services Division Manager Mr. Scott Jackson, Environmental Engineer Mr. Mike Hackett, Senior Environmental Inspector Ms. Olivia Hall, Environmental Inspector Mr. Keith White, Senior Engineer Mr. John Fowler, Environmental Engineer
Department of Fire:	Butch Jones, Deputy Fire Marshal
County Attorney's Office:	Ben Thorp
EPA Representatives:	Mr. Andrew Dinsmore, EPA Region 3, Stormwater Team Leader Ms. Allison Graham, EPA Region 3
Virginia DCR Representative:	Mr. Doug Fritz, MS4 Program Manager
EPA Contractors:	Mr. Mark Briggs, ERG Ms. Kavya Kasturi, ERG Mr. Scott Coulson, PG Environmental, LLC

The inspection focused specifically on the following sections of the permit in relation to the County's MS4 program: (1) Structural and Source Control Measures; (2) Unauthorized Discharges and Improper Disposal; (3) Runoff from Industrial and Commercial Facilities; and (4) Runoff from Construction Sites.

Section II of this report presents background information on Henrico's MS4 program. Section III presents information obtained during the inspection related to the specific permit requirements evaluated.

II. HENRICO BACKGROUND

The County of Henrico is located in central Virginia and is bordered by the James River, Tuckahoe Creek, the Chickahominy River, the City of Richmond and the Counties of New Kent and Charles City. As of 2009, the County's population was estimated as 296,415. The County has a total area of 244 square miles.

¹ A copy of sign-sheets containing the names of all County participants in the inspection is included as Attachment 2.

Henrico's MS4 program is administered by the following departments:

- Department of Public Works;
- Department of Fire;
- Department of Public Utilities;
- Department of Building Construction and Inspections;
- Department of General Services; and
- Department of Planning.

III. INFORMATION OBTAINED DURING THE INSPECTION REGARDING PERMIT REQUIREMENTS

The EPA inspection team obtained information to evaluate the County of Henrico's compliance with the requirements of the permit, under which the County's MS4 system is covered. The permit, included in Attachment 1, has an effective date of 18 March 2003 and an expiration date of 17 March 2008. The permit has not been renewed and it still active. The EPA inspection team evaluated four permit components; observations regarding the County's implementation of each permit component are presented in the following four subsections. Attachment 3, the Exhibit Log, contains all referenced exhibits, and Attachment 4, the Photograph Log, contains all referenced photographs (additional photographs are available in the inspection record).

III.A. Requirement I.A.1.a – Structural and Source Control Measures

Part I.A.1.a of the permit contains requirements for the County to utilize structural and source control measures to reduce pollutants in storm water runoff from commercial and residential areas, which the County addresses through a program herein referred to as its Structural and Source Control Measures Program. Within this program area, the inspection was focused on Parts I.A.1.a(1), (2), and (4) of the permit. State laws such as the Virginia Stormwater Management Law (§ 10-603 et seq. of the Virginia Code), the Virginia Stormwater Management Regulations (4VAC3-20 et seq.), and the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq. of the Virginia Code) provide the underlying regulatory framework for the County's Structural and Source Control Measures Program. The County has promulgated the Henrico County Environmental Ordinance (County Code Chapter 10, *Environment*) which pertains to development and redevelopment in the county. The Henrico County Environmental Ordinance is relevant to both the active construction and post-construction phases of development. The Henrico County Environmental Ordinance, Article VII., *Stormwater Management*, Section 10-219, states "all stormwater management facilities, including Best Management Practices (BMPs) for water quality and quantity management, shall comply with the current edition of the Stormwater Guidelines Manual maintained by the county engineer."

The County's current Stormwater Guidelines Manual, the *Henrico County Environmental Program Manual*, dated August 2001, addresses a wide range of the County's water quality and quantity programs. As it applies to the County's Structural and Source Control Measures Program, the manual covers topics such as plan submission, design criteria for stormwater management best management practices (SWM-BMPs), and water quality compliance calculations for meeting the Chesapeake Bay Preservation Area (CBPA) Designation and Management Regulations (9VAC10-20 et seq.). For calculation of the required pollutant load reduction the County uses the Simple Method, a procedure which is described in the *Chesapeake Bay Local Assistance Manual*. The *Henrico County Environmental Program Manual* states that the County's average land cover condition is assumed to be 16 percent impervious, and phosphorus is

considered the keystone pollutant². As indicated in the *Henrico County Environmental Program Manual* and explained by County staff, the application of the CBPA stormwater quality criteria was expanded to all areas within the County on June 23, 1993. Specifically, the stormwater quality criteria and resulting pollutant load reductions are applicable to all projects within the County that result in 2,500 square feet or more of land disturbance.

The primary staff responsible for the County's Structural and Source Control Measures Program include representatives of the Engineering and Environmental Services Division, an organizational division within the County Department of Public Works. The staff includes five Environmental Plan Review Engineers who review plans for compliance with requirements pertaining to SWM-BMPs in addition to other requirements such as drainage, road design, and landscaping. One Environmental Engineer is tasked with inspecting SWM-BMPs at construction sites during two phases of active construction: rough grading and final conformance. The County utilizes maintenance agreements in which the owner is responsible for both inspection and maintenance of SWM-BMPs located on private property.

For SWM-BMPs located within residential subdivisions where the County collected maintenance fees prior to recordation, the County provides long term maintenance (e.g., dredging) of extended detention basins and shallow marsh basins. Short term maintenance (e.g., mowing, trash collection) are provided by the developer or homeowner's association (HOA). For SWM-BMPs located in plan of development (POD) and certain subdivisions that did not contribute maintenance fees prior to recordation, maintenance is the responsibility of the landowner or HOA. Inspection and maintenance of County-owned SWM-BMPs is the responsibility of the individual County department where the facility is located.

On the basis of limited records review and an office discussion with County staff members, no inconsistencies between the County's Structural and Source Control Measures Program and the permit were identified.

III.B. Requirement I.A.1.b – Unauthorized Discharges and Improper Disposal

Part I.A.1.b of the permit contains requirements for unauthorized non-stormwater discharges and improper disposal, which the County addresses through a program referred to as its illicit discharge program, detailed in Section II of the *Henrico County Storm Water Management Master Plan*, revised March 24, 2010 (hereafter, *County Storm Water Management Master Plan*). The *Henrico County Environmental Ordinance*, Article VII, *Stormwater Management* (hereafter, *Henrico County Storm Water Management Ordinance*) also prohibits illicit discharges to the MS4 (see Exhibit 1, SW Ordinance). In 2007, the County hired a new staff member to implement this program as well as the program to control runoff from industrial and commercial facilities (see section III.C. of this report). The new staff member was hired based on findings from an MS4 audit conducted in July 2005 by Science Applications International Corporation (SAIC) at the request of EPA (hereafter, the July 2005 MS4 audit). Within this program area, the inspection was focused on dry weather screening inspections and follow up and enforcement.

III.B.1. Dry Weather Screening Inspections

Henrico County conducts dry weather screening inspections to ensure any illicit discharges are detected and resolved. In 2007, the County Dry Weather Screening Inspector and additional staff inspected outfalls and storm sewer inlets. Due to limited resources, at the time of the inspection the County inspected only outfalls.

² The *Henrico County Environmental Program Manual* defines "keystone pollutant" as "a pollutant that is an indicator of many different pollutants and not necessarily the target pollutant."

The County has identified industrial and commercial areas with a high likelihood of illicit connections to the storm sewer. The County targeted food preparation facility areas (where discharges of fats, oils, and grease were possible) in 2009, and will investigate automobile maintenance facility areas in 2010 and laundry facility areas in 2011. County staff indicated the latter two categories were chosen based on the July 2005 MS4 audit.

The County Dry Weather Screening Inspector indicated he and supporting staff, including two interns and County mosquito control staff members, inspected 1,200 inlets and outfalls in 2007, 400 outfalls in 2008, and 150 outfalls in 2009. The inspector stated that the 2009 inspections were limited due to wet weather. The County requires five to seven days of dry weather prior to conducting dry weather screening inspections. The inspector indicated that the mosquito control staff informs him of potential issues if noted during their routine activities.

County dry weather screening inspectors are trained on the job and given the Field Screening Standard Operating Procedure to review (Exhibit 2, Field Screening SOP). Inspectors do not attend a formal training. Additionally, new staff within the Department of Public Works Environmental Services Division shadow staff to gain familiarity with the Division's programs.

Prior to beginning the day's inspections, the County Dry Weather Screening Inspector prints out maps, including storm sewers, of the areas to be inspected. The inspector brings the maps, blank inspection reports, a manhole puller, a chlorine test kit, and a camera on the inspections. The map is used to verify the number of outfalls and manholes. If a problem is noted, the outfall is circled on the map and an inspection report is completed (Exhibit 3, Blank Outfall Inspection Report). If no problem is found, a note is made in the tracking database indicating the outfall has been inspected.

During the inspection, the County Dry Weather Screening Inspector checks for standing water or flow. If flow is present, the inspector collects a sample and tests on site for chlorine and pH. The inspector stated that the presence of chlorine indicates that the flow is potable water. If the pH is less than 6 or greater than 8, this would indicate a problem; however, the inspector stated this condition had never been found. The inspector also notes the presence of an oily sheen, odor, or color in the water.

The County uses an Access database to track outfall inspections. This database is also used to track industrial inspections and spills. After the inspections are complete, the County Dry Weather Screening Inspector transfers data from the paper inspection reports into the database. The database fields correspond with the outfall inspection report used in 2007. Since then, the outfall inspection report has been updated, however, the database has not been updated accordingly. For example, the updated inspection report includes a question asking for the color of the flow present; however no corresponding field is present in the database. Additionally, questions no longer included in the inspection report have not been removed from the database. For example, the database still includes a "true or false" field titled "Fluoride Positive" but the question has been removed from the updated inspection report. Also, while the Inspector indicated that tests are conducted for chlorine and pH, there are no designated areas in the inspection report or the database to record this data. See the "Field Title" column of Exhibit 4, Outfall Inspection Database Entries for all database fields. This exhibit contains the database field names and the corresponding entries for four selected records from the County's outfall inspection database.

Observation 1. Henrico County is unable to inspect all stormwater inlets and outfalls.

Part I.B.5 of the permit requires that Henrico County "provide adequate finances, staff, equipment and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A of this permit." However, based on discussions with Henrico County's dry weather screening inspector, the inspector is unable to inspect all stormwater inlets and outfalls. The inspector indicated that in addition to illicit discharge inspections, he is responsible for industrial inspections, complaint response, and spill

response. In 2007, Henrico County inspected inlets and outfalls; however, the inspector stated that Henrico County has discontinued the inlet inspections and currently only inspects a limited number of outfalls annually. The number of inspections conducted by the county decreased from 1,200 in 2007 to 400 in 2008 and 150 in 2009. The Henrico County inspector stated that limited man-power prevents additional outfall inspections from occurring each year. The need for additional resources was previously mentioned in the July 2005 MS4 audit.

III.B.2. Dry Weather Screening Follow Up and Enforcement

Inspectors have been instructed to investigate any problems at the time of the inspection. If flow is present, the inspector reviews the map and locates storm sewer inlets upstream of the outfall. The inspector traces the flow back to its origin. If the flow appears to be coming from an industrial facility, the inspector will meet with the facility manager at the time of the inspection to determine the cause of the flow. This meeting may trigger an industrial inspection at the site (see section III.C. of this report). The County Dry Weather Screening Inspector signs the outfall inspection report to indicate that the investigation was closed.

The County Dry Weather Screening Inspector also notes whether any repair or cleaning is needed for the outfall. The database contains a specific column to indicate whether cleaning is needed. Once a year, the County Dry Weather Screening Inspector generates a list of all the outfalls for which the “NeedsCleaning” field is marked “TRUE” and emails the list to the Road Maintenance Division. Road Maintenance staff enters the cleaning requests into their work order system and complete the requests as time is available. Road Maintenance staff informs the inspector as the requests are completed and the inspector then updates the database by changing the “NeedsCleaning” entry to “FALSE”. There are no other fields in the database specifically for recording any tracking information regarding the submittal and completion of the cleaning request.

Observation 2. Henrico County does not document follow up actions taken after potential illicit discharges are found.

Part I.A.1.b.(3) of the permit requires the County to “conduct on-site investigation of potential sources of unauthorized non-storm water discharges.” The County cannot confirm that this requirement has been met without documenting the investigation. In regards to this permit requirement, Section II.3 of the County Storm Water Management Master Plan specifies that the action taken to address each potential illicit discharge is documented. Upon review of the outfall inspection database, the EPA inspection team noted that a potential illicit discharge was identified during an inspection of SWO-0058 on 1/4/07 (see column “Entry Example 1” in Exhibit 4, Outfall Inspection Database Entries). The inspector stated that he investigated and determined that the source was not an illicit discharge; however, no documentation was present in the database or inspection report (Exhibit 5, SWO-0058 Inspection Report) that detailed the actions he took. After the EPA inspection team inquired about the documentation, the inspector added a note to the file, dated 4/26/10, stating the actions taken to close the file (Exhibit 6, SWO-0058 Follow Up). Additionally, the EPA inspection team found that the database record for an inspection of SWO-0101 on 1/18/07 stated that the water in the manhole needed investigation (see column “Entry Example 2” in Exhibit 4, Outfall Inspection Database Entries). No documentation was present in the database or inspection report (Exhibit 7, SWO-0101 Inspection Report) that detailed the actions taken. The inspection was completed by another inspector and the current inspector could not describe or provide documentation of the actions taken. The EPA inspection team also inquired about the database record for an inspection of SWO-0106 on 1/18/07 (see column “Entry Example 3” in Exhibit 4, Outfall Inspection Database Entries) which stated that “Orange color is present, odor is bad.” The inspector stated that iron bacteria was present in this outfall which was identified by breaking up the oily sheen and noting that it did not come back together. However, no documentation of this finding is present in the database. Additionally, no inspection

report was completed for SWO-0106. The observations were noted on the inspection report for SWO-0101 (Exhibit 7, SWO-0101 Inspection Report). The lack of documentation was previously mentioned in the July 2005 MS4 audit.

Additionally, The County's industrial and outfall inspection database is incomplete and inconsistent with paper records. The database record for the inspection of SWO-0058 includes comments not present on the paper record (see column "Entry Example 1" in Exhibit 4, Outfall Inspection Database Entries and Exhibit 5, SWO-0058 Inspection Report). Also, the column entitled "Closed" in the database, which the inspector explained was used to indicate that illicit discharges and maintenance issues had been resolved, had not been completed. The database does not contain a column to indicate the date of closure or actions taken to close an issue.

Observation 3. Henrico County does not confirm the location of outfalls that the County cannot find visually.

The inspection database indicates that SWO-1454 was inspected on 1/24/08 and 5/21/09 (see columns "Entry Example 4" and "Entry Example 5" in Exhibit 4, Outfall Inspection Database Entries). In the first inspection record, it was noted that the pipe could not be seen due to dirt/debris. Similarly, in the second inspection record it was noted that the inspector "could not find outfall" and that it was "possibly buried." At the time of EPA's inspection, the inspector was not aware of the status of this outfall and stated he would follow up by speaking with Road Maintenance. On 4/23/10, the inspector indicated that he had spoken with Road Maintenance and learned that the outfall was not buried, but located in a different place than he had thought. Part I.A.1.b.(2) of the permit requires the permittee to "continue the implementation of current field screening procedures for identifying unauthorized non-storm water discharges." The County cannot satisfy this requirement without confirming the location of each outfall visually or with Road Maintenance.

III.C. Requirement I.A.1.c – Runoff from Industrial and Commercial Facilities

Part I.A.1.c of the Permit contains requirements to monitor and control pollutants in storm water discharges from certain industrial and commercial facilities; the County's program to address this permit component is described in section III of the County Storm Water Management Master Plan. In 2007, the County hired a new staff member to implement this program as well as the County Illicit Discharge program (see section III.B. of this report). Within this program area, the inspection was focused on industrial and commercial facility identification and prioritization, inspections, and County industrial facility stormwater management.

III.C.1. Identification and Prioritization of Industrial and Commercial Facility Inspections

The County has identified 42 industrial and commercial facilities to inspect (Exhibit 8, Facility List); the County updates the list annually. The facilities include municipal landfills; hazardous waste treatment, storage, and disposal facilities; facilities subject to Section 313 of the Emergency Planning and Community Right to Know Act; and other facilities determined to be contributing substantial pollutant loadings. The County identifies other facilities determined to be contributing substantial pollutant loadings as those facilities that are covered under 9VAC25-151, *General VPDES Permit for Discharges of Storm Water Associated with Industrial Activity*, adopted April 27, 2009 (hereafter, Industrial General Permit). A list of these facilities is obtained from the State annually.

The inspection frequency varies by site and can be every year (11 facilities), every three years (7 facilities) or every five years (24 facilities). Generally, most facilities draining to the MS4 require annual inspection and each such facility is assigned a quarter during which it will be inspected. Facilities draining to the MS4

which have received “Non-Exposure Certification” from the State are inspected every three years. Municipal landfills and facilities that do not drain to the MS4 are inspected every five years.

Facilities are added to the list of facilities to be inspected annually if they are associated with a problem identified during dry weather screening inspections. These facilities are inspected annually, but are removed from the list after three problem-free inspections.

The County has also identified automobile maintenance facilities and laundries as priority categories for inspection. County staff indicated the categories were chosen based on the July 2005 MS4 audit. Automotive repair facilities will be identified and inspected in 2010, laundries in 2011.

Observation 4. Henrico County does not schedule inspections as frequently as needed to monitor and control pollutants from municipal landfills.

Part I.A.1.c of the permit requires that Henrico County have a program to monitor and control pollutants in storm water discharges from municipal landfills. However, the County is not scheduling inspections as frequently as needed to meet this requirement. Henrico County’s list of industrial facilities indicates that two municipal landfills drain to the County’s MS4; however, the County indicates that these facilities only require inspections once every five years (Exhibit 8, Facility List). Records indicate that both landfills were last inspected in 2007 and are not due for reinspection until 2012 (Exhibit 9, Springfield Landfill Inspection Report and Exhibit 10, Charles City Road Public Use Area Inspection Report). A similar issue regarding the lack annual inspections at these municipal landfills was previously identified in the July 2005 MS4 audit.

III.C.2. Industrial and Commercial Facility Inspections

County staff stated that the County does not have legal authority to inspect industrial and commercial facilities for stormwater purposes without witnessing a problem that impacts the MS4³. Therefore, the County has developed a relationship with the industrial and commercial facilities allowing the County to inspect the facilities on a voluntary basis.

To prepare for an industrial inspection, the County Industrial Inspector typically notifies the facility one month in advance of the upcoming inspection. During this time, he prints out area maps, reviews the past inspection reports for the facility and reviews the facility’s stormwater pollution prevention plan (SWPPP) that is required by their coverage under the Industrial General Permit.

The County Industrial Inspector completes an industrial inspection report during each inspection. Once the inspector arrives on site, he meets with the facility manager or responsible stormwater management personnel. The inspection begins in the facility office where the inspector confirms general facility information and then reviews the SWPPP with the facility personnel, focusing on areas that impact the MS4 such as housekeeping, SWM-BMPs, and spill prevention and control. The inspector then tours the outside of the facility to identify any stormwater issues. If the inspector identifies problems impacting the MS4, he notes the problem in the inspection report and provides a timeframe for resolving the issue. For major issues, the inspector may issue a Notice of Violation.

³ Note that Section III of the County Storm Water Management Master Plan states that “the legal authority to conduct inspections and require compliance is based on the fact they drain to the County’s storm sewer system for which the County holds a NPDES permit or the industry has an SIC code that is required to have a NPDES Industrial Permit with a Pollution Prevention Plan.” This contradicts statements made by County staff during the inspection. County staff stated they do not have legal authority to enforce a Storm Water Pollution Prevention Plan.

After the inspection, the County Industrial Inspector types up his handwritten inspection report, including recommended and required actions, and attaches a certification sheet that must be signed by the facility and the County inspector. The facility is then given a copy of the report. An example of a completed inspection report is provided as Exhibit 9, Springfield Landfill Inspection Report.

Observation 5. Henrico County has not established legal authority to inspect private industrial and commercial facilities for stormwater purposes.

Part I.B.4 of the permit requires Henrico County to establish legal authority necessary to control discharges to and from those portions of the MS4 over which it has jurisdiction. Henrico County staff stated that the County did not have legal authority to inspect private industrial and commercial businesses with regard to stormwater discharges unless a release is suspected based on outfall screening information, or if other Henrico County agencies (e.g., Fire Marshall, sanitary district's pretreatment inspectors) identify a potential release. However, this contradicts Section III of the County Storm Water Management Master Plan; it appears that the County has the authority but is not using it. Henrico County currently relies on industrial and commercial facilities submitting to a voluntary inspection and notifies the facilities 30 days in advance of the inspection.

Observation 6. Henrico County is not completing all industrial and commercial facility inspections that the County has identified as necessary.

Part I.B.5 of the permit requires that Henrico County "provide adequate finances, staff, equipment and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A of this permit." County staff indicated that during the July 2005 MS4 audit, EPA identified both automobile maintenance facilities and laundries as potential sources of contaminated stormwater runoff. Due to a lack of inspection staff on the MS4 team, Henrico County has not inspected these facilities to date, and is now planning to begin inspection of automobile maintenance facilities in 2010 and laundries in 2011. Instead, Henrico County has focused on Fat, Oil and Grease (FOG) discharges from food preparation establishments (e.g., restaurants) to the sanitary sewer and storm sewer. In 2009, more than 200 FOG inspections were conducted by the Henrico County Building Inspectors office to determine if grease traps and grease recycling is occurring at food preparation establishments. The focus of this effort appears to be on sanitary sewer discharges rather than runoff to the MS4 since no Notices of Violations have been issued with regard to discharges to the MS4. While the FOG inspections are an important component of maintaining the sanitary sewer system, the County should also be inspecting discharges to the MS4 system.

Additionally, Henrico County relies on one inspector to conduct industrial inspections and outfall screening assessments. Of the hundreds of potential industrial and commercial facilities in Henrico County identified by the EPA inspection team, Henrico County has identified only 11 facilities to voluntarily inspect annually. Of these 11 facilities, only three were inspected every year between 2007 and 2009. Of the remaining eight facilities, six were missing inspections in one of the three years and two were missing inspections in two of the three years. In 2009, the County Industrial Inspector conducted 150 dry-weather outfall inspections to identify illicit discharges, although the inspector indicated that there are over 1,000 outfalls in Henrico County. The need for additional resources was previously mentioned in the July 2005 MS4 audit.

III.C.3. Industrial Facility Site Visits

On April 20, 2010, the EPA inspection team witnessed a series of industrial facility inspections performed by the County Industrial Inspector. Summary observations pertaining to the sites are presented below.

Site: Powhatan Ready Mix – 4608 Racrete Rd, Richmond, VA

Powhatan Ready Mix produces ready-mixed concrete for the Richmond area. Sand and stone are trucked in and stored in four silos. Additionally, the site has a silo for fly ash and two silos for cement. The raw materials are conveyed to mixing equipment where the aggregate is made. The aggregate is then loaded onto trucks and delivered. This facility had not previously been inspected or identified by the County and does not drain to the MS4.

The County Industrial Inspector began the inspection by meeting with the Plant Manager and Area Operations Manager in their office. The inspector reviewed general plant information including their address. The inspector requested to view their VPDES permit and SWPPP, then proceeded to ask questions to determine any potential areas for spills and or materials that could contact stormwater. The inspector then reviewed a map of storm sewer inlets with the plant personnel. At this time, the inspector realized that Powhatan Ready Mix, located at 4608 Racrete Rd, was a separate facility from Ready Mix Concrete, located at 4607 Racrete Rd, which he had intended to visit.

The County Industrial Inspector continued the inspection by touring the outdoor areas of the plant. The EPA inspection team made the following observations which were not noted by the County Industrial Inspector:

- Sediment and debris was present near the surface water outfall of a pit. Hay bales and rip rap were placed in front of and into the pit, respectively, in order to prevent sediment and debris from reaching the outfall to surface water.
- Stockpiles of sand and stone were not covered and were only contained on three of four sides.
- No spill kits were located near the fuel tanks. The site did have a spill kit; however, it was not stored in a readily-accessible area. The County Industrial Inspector did not ask about the location of the spill kits until prompted by the EPA inspection team.

Site: Alfa Laval – 5400 International Trade Drive, Richmond, VA

Alfa Laval manufactures heat exchangers. Industrial processes are primarily conducted indoors and drain to the sanitary sewer; however, metal compactors and some storage areas are present outdoors. Outdoor areas drain to a stormwater retention pond located on site and then drain to the MS4. The facility drains to the MS4 and was last inspected on March 17, 2010. The facility is subject to annual inspections.

The primary stormwater contact, the Environmental Health and Safety Coordinator, was unavailable during the site visit. The County Industrial Inspector met with an alternate contact; however, she was unable to provide the SWPPP and other relevant stormwater-related records. The inspector proceeded directly to touring the outdoor areas of the facility. The EPA inspection team first visited the stormwater detention pond, then viewed catch basins along the outside of a facility building, and concluded the inspection in the storage area. The EPA inspection team made the following observations which were not noted by the County Industrial Inspector:

- Piles of rusty metal were located in the outdoor storage area near a stormwater inlet. The piles were not covered. Rust-colored stains led from the piles to the stormwater inlet indicating that rust-laden water had flowed into the stormwater inlet.

- Uncovered drums were present in the outdoor storage area. Plant personnel confirmed that the drums were empty and stated that they would typically be stored in covered areas. The County Industrial Inspector did not ask about the drums until prompted by the EPA inspection team.

Site: Ennis Paints – 4400 Vawter Ave, Richmond, VA

Ennis Paints manufactures water-based traffic paint and thermoplastic pigments. Industrial processes are located indoors; however, finished paint totes are stored outside. Only the front of the plant, which primarily consists of grass and a parking lot, drains to the MS4. The majority of the facility area drains to a dry detention pond which then drains directly to state waters. The facility was last inspected on March 3, 2010.

The County Industrial Inspector began by interviewing the Environmental Health and Safety Manager. During the interview, it was determined that the plant had not yet completed updating its SWPPP and had not yet fully developed a spill response team. The inspector had identified the need for an updated SWPPP during the last inspection, but had not provided a time frame for completing the SWPPP. The interview also revealed that a spill had occurred since the last inspection. On March 12, 2010, an indoor latex tank ruptured releasing 800 gallons of 100% pure latex paint. The spill exited the facility underneath doors and through cracks in the foundation and, due to wet weather, was carried to the detention pond. The state was notified; however, the County was not notified since the spill did not reach the MS4. The facility plugged the pond's outfall to surface waters and pumped the contaminated water from the pond into tanks. The facility has received authorization to dump the water into the sanitary sewer.

After the interview, the inspection continued with a tour of the outdoor area of the facility. The EPA inspection team viewed the paved area, pond, and outfall to surface water located to the left of the plant. The team then viewed the remaining paved area and stormwater inlets, including the area where the spill reached the outdoors. The team concluded its visit at the front of the facility which drained to the County MS4. The EPA inspection team made the following observations which were not noted by the County Industrial Inspector:

- An uncovered dumpster was located outside.
- Soapy flow was entering a stormwater inlet leading to the pond. The Environmental Health and Safety Manager indicated it was coming from vehicle washing; however, he has previously stated no vehicle washing occurs on site. The County Industrial Inspector did not inquire further about the vehicle washing flow.
- No secondary containment was placed around finished paint totes. Numerous paint totes were present on site.
- Debris was located under a truck on site.
- Numerous paint stains were located around the facility.

Observation 7. Henrico County is not adequately identifying all facilities contributing substantial pollutant loadings.

The EPA inspection team accompanied the industrial inspector to inspect Ready Mix Concrete at 4607 Racrete Rd; however, the team was taken to Powhatan Ready Mix at 4608 Racrete Rd by mistake. The inspector was not aware that Powhatan Ready Mix was a different plant from Ready Mix Concrete until the interview had begun. The plant personnel indicated that the plant had been located at this address for

more than 20 years; however, the plant was not on the list of facilities determined by the County to be contributing substantial pollutant loadings. Multiple other concrete plants were on the list. Part I.A.1.c of the permit requires the County to “control pollutants in storm water discharges from... facilities determined by the permittee to be contributing substantial pollutant loadings” however, the County cannot fulfill this requirement without identifying all such facilities and then prioritizing these facilities with regard to their potential pollutant loadings. A similar issue regarding the lack of a list of facilities contributing substantial pollutant loadings was previously identified in the July 2005 MS4 audit.

Observation 8. The Henrico County Industrial Inspector does not conduct the thorough inspections needed to monitor and control pollutants from industrial facilities.

Part I.A.1.c of the permit requires that Henrico County have a program to monitor and control pollutants in storm water discharges from industrial facilities. During an inspection conducted on April 20, 2010 with the EPA inspection team at Powhatan Ready Mix, the County Industrial Inspector did not note uncovered stockpiles of stone and sand (Exhibit 11, Powhatan Inspection Report). Additionally, the inspector did not ask about the spill kit for the fuel tanks until prompted by the EPA inspection team.

During an inspection conducted on April 20, 2010 with the EPA inspection team at Alfa Laval, a heat exchanger manufacturer, the County Industrial Inspector did not note evidence of rust flowing into the storm drain from uncovered rusty metal stored outside (Exhibit 12, Alfa Laval Inspection Report). Also, the inspector did not investigate drums stored outside until noted by the EPA inspection team.

An inspection at Ennis Paints on April 20, 2010 found the facility did not have a current SWPPP (Exhibit 13, Ennis Paints Inspection Report). Henrico County inspected this location on March 3, 2010 and had told Ennis Paints during that inspection that a complete SWPPP must be developed (Exhibit 14, Past Ennis Paints Inspection Report). Nearly 45 days later, the site had still not developed a complete SWPPP. The County Industrial Inspector stated he did not give Ennis Paints a time frame for completing the SWPPP. During this same time period Ennis Paints had a large paint spill inside the building which ultimately drained beneath a building door, onto a paved area and eventually into the on-site BMP before reaching the adjacent stream. The paint spill occurred during a wet-weather event which allowed the spilled paint to reach the stormwater BMP. Had a SWPPP been implemented in a timelier manner, Ennis Paints may have recognized that a spill originating in the building could ultimately reach the on-site BMP and then the river. Also during the inspection, the Ennis Paint Environmental Health and Safety Manager stated that no vehicle washing occurred on site; however, the County Industrial Inspector did not inquire further when flow from vehicle washing was found on site. The inspector also did not note paint stains located around the property, an uncovered dumpster located outside, debris located under a truck behind the plant, and the lack of secondary containment for totes of finished paint product.

III.C.4. County-owned Industrial Facilities

Henrico County has two government center campuses; one located in the west end of the County and one located in the east. The west end campus is the primary campus and includes a number of industrial facilities. On April 19, 2010, the EPA inspection team visited two of the industrial facilities: the Central Automotive Maintenance garage (CAM) and the County salt storage area. Neither facility was required to have a SWPPP. All referenced photographs are contained in Attachment 4, Photograph Log.

Site: Henrico County Central Automotive Maintenance Garage – 10301 Woodman Road, Henrico, VA

CAM is responsible for maintaining all County-owned vehicles, such as school busses, police cars, and garbage trucks. Two buildings house the maintenance areas, one for large vehicles and one for cars. The outdoor facilities include a washing station, waste oil storage, and vehicle storage. CAM drains to the

MS4; however, it has not been identified as a facility requiring inspection by the County Industrial Inspector.

During the EPA inspection team's site visit, the team toured the inside of the large vehicle maintenance building, viewed the outdoor areas and inlets to the storm sewer and oil-water separator on site, toured the small vehicle maintenance building and ended the visit in the parking area. During the site visit, the EPA inspection team observed the following:

- Waste oil tanks lacked secondary containment or interstitial leak detection (Photograph 1). While the tanks were double-walled, without interstitial leak detection, facility personnel would not be notified until the leak had breached the outer wall. There was no secondary containment to prevent such a leak from reaching the MS4. Additionally, drums were stored outside without cover or secondary containment (Photograph 2). It was not clear if the drums were empty or not. Other tanks without secondary containment were located near the parking area (Photograph 3).
- Uncovered dumpsters were present outside (Photograph 4).
- Oil spill stains were located in numerous locations around the site (Photographs 5 through 8).

After visiting CAM, the EPA inspection team and the County Industrial Inspector visited the County salt storage area. The area was open and not yet grassed. A salt dome, two tanks of magnesium chloride deicing solution, and a stormwater retention pond were located on site. A new infiltration trench was under construction.

The County Industrial Inspector indicated that the pond was used for settling and is not designed for salt removal. If a spill occurs, the pond is pumped out. A wetland was located downslope from the pond.

The EPA inspection team made the following observations while on site:

- Dark stains were located around the retention pond (Photographs 9 and 10). The County Industrial Inspector was not sure if the staining was from a release, or from moisture permeating through the soils.
- The silt fence behind the pond was compromised. A wetland was located downslope from the silt fence (Photograph 11).
- Thick algae build up was present in a small area of a swale leading to the pond (Photograph 12).
- Dead vegetation was present around a swale near the back of the facility (Photograph 13).
- Stockpiles of dirt and stone around the facility were not covered or contained (Photographs 14 and 15). Additionally, large debris, trash and branches, strewn near the back of the site, were not covered or contained (Photograph 16).

Observation 9. Henrico County is not adequately minimizing pollutant discharges from County industrial facilities.

Part I.B.2. states that "the permittee shall ensure that all pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable." The EPA inspection team toured Henrico County's Central Automotive Maintenance (CAM) facility and salt storage facility which both had

areas where storm water could contact pollutants. At the facilities, the EPA inspection team noted evidence of numerous oil spills in close proximity to storm drains, open dumpsters, outdoor above-ground petroleum storage tanks without secondary containment, compromised silt fencing near a wetland, and uncovered stockpiles. While neither facility was required to have a SWPPP, both have employed some structural and source control BMPs to control pollutant discharges in storm water. Neither facility has a BMP plan for the maintenance of the existing controls or installation of new controls.

III.D. Requirement I.A.1.d – Runoff from Construction Sites

Part I.A.1.d of the permit requires a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites, which the County addresses through a program referred to as its Erosion and Sediment Control (ESC) Program. The County ESC Program components and applicable requirements related to this section of the permit are discussed below.

III.D.1. Erosion and Sediment Control Plan Review

The Henrico County Environmental Ordinance, Article II, *Erosion and Sediment Control* (hereafter, Henrico County Erosion and Sediment Control Ordinance) requires project proponents to submit an ESC plan for review and approval by the County when the project will result in 2,500 square feet or more of land disturbance. The Engineering and Environmental Services Division has one Environmental Engineer who reviews ESC plans for most private development projects. ESC plans for many of the County-administered projects (e.g., transportation) are reviewed by the County's Senior Environmental Inspector.

III.D.2. Erosion and Sediment Control Inspections

ESC inspections are conducted by County Department of Public Works Environmental Inspectors. There are eight Environmental Inspector positions assigned to geographic areas. The area assigned to an inspector is determined by the number and distribution of active projects, and the geographic boundaries are delineated by grouped watersheds. In response to a review of the County's ESC Program by DCR, one Environmental Inspector has been tasked with conducting ESC inspections of construction sites involving single family homes. The Virginia Erosion and Sediment Control Regulations, 4VAC50-30-060B, Maintenance and Inspections, requires Henrico County to "provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds."

A County Engineering and Environmental Services Division database is used to maintain ESC inspection records. If the County Environmental Inspector does not identify deficiencies during an ESC inspection, the inspection record is limited to recording the date of inspection in the database. When deficiencies are identified by the County Environmental Inspector, additional details are maintained in hardcopy files which include the County *Erosion and Sediment Control Inspection Report*.

Observation 10. Henrico County Environmental inspectors do not assess non-sediment, construction site pollutant sources.

Part I.A.1.d of the permit requires a "program to continue implementation and maintenance of structural and nonstructural best management practices [i.e., temporary construction site BMPs] to reduce *pollutants* in storm water runoff from construction sites" [emphasis added].

In contrast to this requirement, the County Environmental inspectors have not been tasked with assessing construction site pollutant sources other than sediment-generating sources. Section 10-31 of the Henrico

County Erosion and Sediment Control Ordinance states “the purpose of this article is to provide for the control of *erosion and sedimentation*....Authority for this article is found in [the Virginia Erosion and Sediment Control Law] Code of Virginia §§ 10.1-562 and 10.1-2108, as amended [emphasis added].” The Virginia Erosion and Sediment Control Regulations (4VAC50-30) have been promulgated to administer, implement, and enforce the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Virginia Code). However, the Virginia Erosion and Sediment Control Regulations pertain only to “erosion and sediment control concerns,” and mandate the adoption of erosion and sediment control programs by localities, which dictates the scope of the local program (Exhibit 15, VESCR). Further explanation is provided in the County Storm Water Management Master Plan. Specifically, the County Storm Water Management Master Plan, Section IV.2, Pre-Construction Meetings and Inspections, states “responsibility for inspection and enforcement rest with the Department of Public Works, who make periodic inspections of land-disturbing activities in accordance with State law.” Accordingly, the County’s inspection checklist does not include a non-sediment component or question set (Exhibit 16, ESC Inspection Checklist).

III.D.3. Construction Site Visit

On April 20, 2010 the EPA inspection team witnessed an inspection of a Henrico County Public School construction site (West Area Middle School No. 1) performed by a County Environmental Inspector. Summary observations pertaining to the site visit are presented below.

Site: Henrico County Public School – West Area Middle School No. 1

During the EPA inspection team’s site visit on April 20, 2010, deficiencies pertaining to non-sediment pollutants such as solid waste (Photographs 17 through 19), an oil product (Photograph 20), construction chemicals (Photographs 21 and 22), and concrete wash water were observed. Although the site operator had obtained coverage under the *Virginia Storm Water Management Program (VSMP) General Permit No. VAR10 for Discharges of Storm Water from Construction Activities*, effective July 31, 2009 (hereafter, Construction General Permit), the County-approved Erosion and Sediment Control Sheet was being used as the SWPPP site map for the construction site. Due to the limited scope of the County-approved Erosion and Sediment Control Sheet, the site map did not designate a location for a concrete wash-out area, a requirement of the Construction General Permit. Because a concrete wash-out BMP had not been designated at the site, concrete wash water was observed being actively released onto the ground surface (Photographs 23 through 29).

The County Environmental Inspector did not identify deficiencies pertaining to non-sediment pollutants while on site, and the deficiencies described in the preceding paragraph were not documented in the corresponding County *Erosion and Sediment Control Inspection Report* (Exhibit 17, County inspection record for West Area Middle School). Furthermore, the County’s Senior Environmental Inspector was present during the site visit, but did not express that the deficiencies pertaining to non-sediment pollutants were actionable deficiencies.

The EPA inspection team noted that the Henrico County Storm Water Management Ordinance may enable the County to address non-sediment, construction site pollutant sources such as: construction chemicals; vehicle and equipment maintenance and fueling; paving and grinding; spill prevention and control; solid waste; concrete waste and wash water; and sanitary/septic waste (e.g., portable toilets).

Observation 11. Henrico County’s Erosion and Sediment Control inspection documentation was not in accordance with the Henrico County Erosion and Sediment Control Ordinance.

Part I.A.1.d(1) of the permit requires Henrico County “to continue to operate in accordance with, and continue enforcement of, the stormwater management requirements of the Chapter 10, Environment, and Chapter 24, Zoning, of the Code of the County of Henrico Virginia, for land disturbing activities.”

Section 10-41 of the Henrico County Erosion and Sediment Control Ordinance states “inspection and enforcement under this article shall be the responsibility of the director [director of public works/county engineer] and his designees, who shall make periodic inspections of the land disturbing activity in accordance with [the Virginia Erosion and Sediment Control Regulations] 4VAC50-30-060B.”

The Virginia Erosion and Sediment Control Regulations, 4VAC50-30-060B, Maintenance and inspections, requires Henrico County to “provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, *within 48 hours following any runoff producing storm event*, and at the completion of the project prior to the release of any performance bonds [emphasis added].” In contrast to this requirement, Henrico County does not maintain records to document the type of inspection performed (e.g., initial installation, two-week period, post-storm event, project completion). The County *Erosion and Sediment Control Inspection Report*, the inspection form used to document inspections, does not provide a structured format to facilitate documenting the inspection type (Exhibit 16, ESC Inspection Checklist). The County’s Senior Environmental Inspector indicated that storm events are not tracked, and precipitation records are not utilized to ensure that post-storm event inspections are conducted within the required 48 hour time period. The County’s Senior Environmental Inspector further explained that due to the limited number of County Environmental inspectors, the County relies on the judgment of its inspectors to conduct post-storm event inspections of those sites which are in critical stages of construction, rather than all sites. Under this approach, Henrico County does not maintain records to document that inspections are carried out in accordance with Section 10-41 of the Henrico County Erosion and Sediment Control Ordinance and the Virginia Erosion and Sediment Control Regulations.

III.D.4. Education and Training for Construction Site Operators

The County Storm Water Management Master Plan, Section IV.3, Construction Site Operators Education and Training Program, states that “construction site operators often need training and education about the sources, control, and impacts of pollutants in run-off from construction sites... The State has recently required contractors to obtain erosion and sediment control certification.” The Virginia Erosion and Sediment Control Training and Certification Program consists of two tracks: the Erosion and Sediment Control Certification Program and Responsible Land Disturber (RLD) Certificate of Competence Program. The Erosion and Sediment Control Certification Program is intended for local and state officials to obtain certain certifications (e.g., ESC Inspector, Program Administrator, Plan Reviewer, and Combined Administrator) to implement local government ESC programs. The RLD Certificate of Competence Program is aimed at a broader audience to provide the required certification to conduct a regulated land disturbing activity in the commonwealth. The RLD is the person responsible for day-to-day implementation and maintenance of all ESC measures in accordance with the County-approved plan. All construction projects are required to staff an individual who holds DCR certification as a RLD.

Henrico County relies on the Virginia Erosion and Sediment Control Training and Certification Program, and does not conduct its own formal education and training classes for construction site operators regarding the sources, control, and impacts of pollutants in run-off from construction sites. Accordingly, the *Henrico County Municipal Separate Storm Sewer System 2009 Virginia Pollutant Discharge*

Elimination System Annual Report, VPDES Permit No. VA0088617, states “no formal education classes were sponsored by the County for construction site operators during this permit year.” This issue was previously mentioned in the July 2005 MS4 audit which states “the County conducted a Site Contractor Workshop on November 7, 2002, which was a few months before the new RLD requirements were finalized.”

The County’s Senior Environmental Inspector explained that the County uses pre-construction meetings to educate construction site operators on site-specific issues. At the pre-construction meeting, the County’s Environmental Inspector will review the ESC plan with the RLD and ensure that the erosion and sediment control sequence and intent of the ESC plan is understood.

Observation 12. Henrico County has not conducted a formal education and training class for construction site operators during its current MS4 permit term.

Part I.A.1.d(2) of the permit requires Henrico County to “continue implementation of the education and training program for construction site operators.”

In contrast to this requirement, the County’s Senior Environmental Inspector indicated that Henrico County had not conducted a formal education and training class for construction site operators since a site contractor workshop that was held on November 7, 2002 (Exhibit 18, Construction workshop syllabus). The County’s Senior Environmental Inspector also indicated that he found the 2002 site contractor workshop useful in reaching a broad audience, and covering many of the deficiencies commonly identified at construction sites by the County’s Environmental Inspectors. However, this workshop was held prior to the March 18, 2003 effective date of Henrico County’s MS4 permit, and the County therefore had not conducted a formal education and training class for construction site operators during its current permit term.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 28 2013

Dr. Edwin C. Daley
City of Hopewell
300 N. Main Street
Hopewell, VA 23860

Re: Docket No. CWA-03-2013-0069DN
Administrative Order for Compliance and Request for Information

Dear Dr. Daley:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the City of Hopewell submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the City: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the City of Hopewell has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.



If you require any information or assistance regarding this matter, please contact Peter Gold,
NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa". The signature is fluid and cursive, with a large initial "J" and "M".

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR
Jerome Brooks, VA DEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

City of Hopewell
300 N. Main Street
Hopewell, VA 23860

Docket No. CWA-03-2013-0069DN

**ORDER FOR COMPLIANCE
AND
INFORMATION REQUEST**

Respondent

I. STATUTORY AUTHORITY

- 1) This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY BACKGROUND

- 2) Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control

Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.

- 6) On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
 - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
 - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
 - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements . . . section 1342 . . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- 11) "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:
 - a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm

drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and

- b) "Designed or used for collecting or conveying storm water. . ." 40 C.F.R. § 122.26(b)(8)(i).
- 13) A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
- a) "Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
 - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- 14) Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
- a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
 - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. *See also* 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- 16) Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . ."
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

III. EPA FINDINGS AND ALLEGATIONS

- 20) City of Hopewell, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Hopewell, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Appomattox River (J15E), James River, Bailey and Cattail Creek (G03E), Gravelly Run, Poythress Run and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Appomattox River (J15E), James River, Bailey and Cattail Creek (G03E), Gravelly Run, Poythress Run and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- 24) The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- 26) During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

IV. VIOLATIONS

Count 1: MCM 3: Illicit Discharge Detection and Elimination

- 27) Section II.B.3.f of the Permit requires the Respondent to "track the number of illicit discharges identified, provide narrative on how they were controlled or eliminated, and submit the information in accordance with Section II.E.3."

- 28) Section II.E.3.i of the Permit requires the Respondent to include "the number of illicit discharges identified and the narrative on how they were controlled or eliminated pursuant to Section II.B.3.f" in each of its annual reports.
- 29) Respondents MS4 Program Plan requires: "Reports of any illicit discharges detected and eliminated during the reporting cycle will be included in the annual report. Any modifications to the ordinance completed during the reporting cycle will be summarized in the annual report."
- 30) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

Count 2: MCM 5: Post-Construction Stormwater Management

- 31) Section II.B.5.b.(5) and Section II.B.b.(6) of the Permit requires the Respondent to "conduct site inspection and enforcement measures consistent with the Virginia Stormwater Management Act and attendant regulations" and "track all known permanent stormwater management facilities that discharge to the regulated small MS4."
- 32) Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports. Section II.E.3.k of the Permit requires the Respondent to include "a list of all known permanent stormwater management facility data tracked under Section II.B.5.b.(6) submitted in a database format to be prescribed by the department. Upon filling of this list, subsequent reports shall only include those new stormwater management facilities that have been brought online."
- 33) Respondents MS4 Program Plan requires that: "Inspect all BMPs at least once during the permit term. Ensure maintenance agreements are received for privately-owned BMPs prior to site plan approval. Report status of the BMP inspection and maintenance program in the annual report including any new BMPs constructed during the reporting cycle with HUC code, surface water, and number of acres treated."
- 34) Based on EPA's 2011 File Review Respondent either:
 - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
 - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

V. CONCLUSIONS OF LAW

- 35) Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this 28th day of March, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

- 36) Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 37) Within thirty (30) days of the effective date of this Order, Respondent shall:
- Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or
 - Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold
U.S. EPA, Region III (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE
DCR Division of Stormwater Management
Office of Regulatory Programs Manager
Virginia Department of Conservation and Recreation
203 Governor Street, Suite 206
Richmond, VA 23219

- Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the*

verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VII. GENERAL PROVISIONS

- 38) Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- 39) This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- 40) Issuance of this Order and Request shall not be deemed an election by EPA to forego any civil or criminal action to seek civil penalties, fines, or other appropriate relief under the Act for the violations set forth in the Findings and Allegations.

VIII. JUDICIAL REVIEW

- 41) Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.

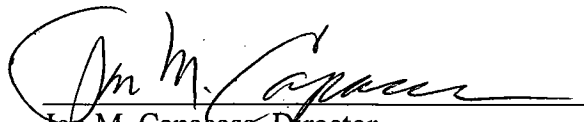
IX. OPPORTUNITY TO CONFER

- 42) Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

X. EFFECTIVE DATE

- 43) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 28 2013


Jon M. Capacasa, Director
Water Protection Division
U.S. EPA, Region III